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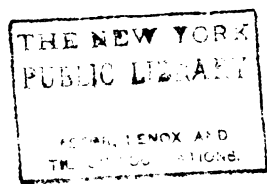














*D. Edwin sc.*

*The Rt. Hon. The Wm. Pitt*

SELECT  
SPEECHES,

FORENSICK AND PARLIAMENTARY,

WITH PREFATORY REMARKS.

*Nathaniel* BY  
N. CHAPMAN, M. D.

HONORARY MEMBER OF THE ROYAL MEDICAL SOCIETY OF  
EDINBURGH, AND MEMBER OF THE AMERICAN  
PHILOSOPHICAL SOCIETY, &c. &c.

—Pietate gravem ac meritis si forte virum quem  
Conspexere, silent, arrectisque auribus astant;  
*Ille regit dictis animos et pectora mulcet.....VIRG.*

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**" SELECT SPEECHES, Forensick and Parliamentary, with prefatory remarks. By N. Chapman, M. D. honorary member of the Royal Medical Society of Edinburgh, and member of the American Philosophical Society, &c. &c.**

*Ille regit dictis animos et pectora mulcet...VIRG."*

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**D. CALDWELL,**  
Clerk of the District of Pennsylvania.

NOV 1807  
JUL 1808  
VIRGIL

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# SELECT SPEECHES.

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## SPEECH

OF THE HONOURABLE MR. ERSKINE,

ON THE TRIAL OF THE DEAN OF ST. ASAPH FOR A LIBEL,  
BEFORE MR. JUSTICE BULLER, ON THE SIXTH OF AUGUST, 1784.

THE case of the King against the Dean of St. Asaph, in which the two following speeches of Mr. Erskine, lately Lord Chancellor of England, were delivered, forms an era in English jurisprudence. In this cause, and consequent upon its decision, arose one of the most interesting and solemn discussions of a great constitutional question, which ever agitated the courts or the parliament of Britain.

The Dean was indicted for a libel, and tried before Mr. Justice Buller, on the 6th of August, 1784. The publication, on which the indictment was founded, was written by that elegant and accomplished scholar and jurist, Sir William Jones, and a small number of the pamphlets were circulated by his friend and relative the Dean. On the trial of the Dean for the libel, Mr. Erskine delivered the first of the speeches which follow, in his defence. The judge, in summing up, told the jury, that there were only two questions for their consideration; namely, the fact of the publication, and the truth of the *innuendos*.

And the jury found the defendant guilty of publishing, but whether a libel or not, they did not find.

A motion was made by Mr. Erskine, at a succeeding term, for a new trial; and upon the rule to show cause, the second speech was delivered. The opinion of the court, pronounced by Lord Mansfield, with his accustomed eloquence and force, was against the application, and the new trial was refused.

The speech of Mr. Erskine, on the trial, is thought deserving of preservation, as a specimen of the persuasive and brilliant powers of this celebrated advocate; and his argument upon the motion for a new trial, as a masterly and admirable vindication of the rights of juries, upon rational, legal and constitutional grounds. The genius of the orator is visible throughout both these productions, and we present them as strikingly displaying those practical and brilliant talents, which fit their possessor for the various scenes of the forum.

#### SPEECH, &c.

GENTLEMEN OF THE JURY,

MY learned and respectable friend (for so upon this as upon all other occasions, he has approved himself) having informed the court that he means to call no other witness to support the prosecution, you are now in possession of the whole of the evidence, on which the prosecutor has ventured to charge my reverend friend and client, the Dean of St. Asaph, with a seditious purpose to excite disloyalty and disaffection to the person of his king, and an armed rebellion against the state and constitution of his country; which evidence is nothing more than his direction to another to publish this dialogue containing in itself nothing seditious, with an advertisement prefixed to it containing a solemn protest against all sedition.

The only difficulty therefore, gentlemen, which I feel in resisting so false and malevolent an accusation, is to be able to repress the feelings of my mind, excited by its folly and injustice, within those bounds

which leave its faculties their natural and unclouded operations; for I solemnly declare to you, that if he had been indicted as a libeller of our holy religion, only for publishing that the world was made by its Almighty author, my astonishment could not have been greater than it is at this moment, to see this little book which I hold in my hand, presented by a grand jury of English subjects, as a libel upon the government of England. Every sentence contained in it, if the interpretation of words is to be settled, not according to fancy, but by the common rules of language, is to be found in the brightest pages of English literature, and in the most sacred volumes of English laws: if any one sentence from the beginning to the end of it be seditious or libellous, the Bill of Rights (to use the language of the advertisement prefixed to it) was a seditious libel; the revolution was a wicked rebellion; the existing government is a traitorous conspiracy against the hereditary monarchy of England, and our gracious sovereign whose title, I am persuaded, we are all of us prepared to defend with our blood, is a usurper of the crowns of these kingdoms.

All these absurd, preposterous, and treasonable conclusions, follow necessarily and unavoidably if this dialogue be a libel. I shall imitate the example of my learned friend, who has pledged his personal veracity in support of his sentiments, and assert upon my honour, that what I have declared is my unaltered and I believe, unalterable opinion, formed upon the most mature deliberation; and I choose to place this declaration in the very front of my address to you, that you may not, in the course of it, mistake the energies of truth and freedom for the zeal of professional duty.

This declaration of my own sentiments, even if my friend had not set me the example by giving you his, I should have thought my duty in this cause; for although in ordinary cases, where the private right of the party accused is alone in discussion, and no general consequences can follow from the decision, the

advocate and the private man ought, in sound discretion, to be kept asunder; yet there are occasions when such separation would be treachery and meanness. In a case where the dearest rights of society are involved in the resistance of a prosecution, where the party accused is, as in this instance, but a mere name; where the whole community is wounded through his sides, and where the conviction of the private individual is the subversion or surrender of publick privileges, the advocate has a more extensive charge. The duty of the patriot citizen then mixes itself with his obligation to his client, and he disgraces himself, dishonours his profession, and betrays his country, if he does not step forth in his genuine character, and vindicate the rights of all his fellow citizens, which are attacked through the medium of the man he is defending. Gentlemen, I do not mean to shrink from that responsibility upon this occasion; I desire to be considered the fellow criminal of the defendant, if by your verdict he shall be found one, by publishing in advised speaking (which is substantially equal in guilt to the publication of which he is accused before you) my hearty approbation of every sentiment contained in this little book; promising here in the face of the world, to publish them upon every suitable occasion, amongst that part of the community within the reach of my precept, influence, and example. If there be any more prosecutors of this denomination abroad among us, they know how to take advantage of these declarations.

Gentlemen, when I reflect upon the danger which has often attended the liberty of the press in former times, from the arbitrary proceedings of abject, unprincipled, and dependent judges, raised to their situations without abilities or worth, in proportion to their servility to power, I cannot help congratulating both the publick and my client, that you are to try this indictment with the assistance of the learned judge before you; much too instructed in the laws of this land to mislead you by mistake, and I hope

too conscientious and independent to misinstruct you by design.

The days indeed are now, thank God, long past, when, upon trials of this sort, judges and jurymen were constantly pulling in different directions; the court endeavouring to annihilate altogether the province of the jury, and the jury in return listening with disgust, jealousy and alienation, to the directions of the court. Now they are tried, and I hope ever will be tried, with that harmony which is the beauty of our legal constitution; the jury preserving their independence in judging of that *malus animus*, which is the essence of every crime; but listening to the opinion of the judge upon the evidence, and upon the law with that respect and attention which dignity, learning, and honest intention in a magistrate, must and ought always to carry along with it.

Having received my earliest information in my profession from the learned judge himself,\* and having daily occasion to observe his able administration of justice, you may believe that I anticipate nothing from the bench unfavourable to my client; and I have experienced his regard in too many instances, not to be sure of every indulgence that is personal to myself.

These considerations enable me with more freedom to make my address to you upon the merits of this prosecution, in the issue of which our own general rights, as members of a free state, are not less involved than the private rights of the individual I am defending.

Gentlemen, my reverend friend stands before you under circumstances new and extraordinary, and I might add *harsh* and *cruel*! For he is not tried in the *forum* where he lives, according to the wise and just provisions of our ancient laws; he is not tried by the vicinage, who, from their knowledge of general character and conduct, were held by our wise and hu-

\* Mr. Erskine was for some time one of the judge's pupils, as a special pleader, before he was raised to the bench.

mane ancestors to be the fittest, or rather the only judges of that *malus animus* which is the essence of every crime; he is deprived of that privilege by the arts of the prosecutor, and is called before you, who live in another part of the country, and who, except by vague reputation, are utter strangers to him.

But the prosecution itself, abandoned by the publick, and left in the hands of an obscure individual, is not less extraordinary than unjust, only that it palpably refutes the truth of the accusation. For if this little book be a libel at all, it is a libel upon the state and constitution of the nation, and not upon any person under the protection of its laws: it attacks the character of no man in this or any other country; and therefore no man is individually or personally injured or offended by it. If it contain matter dangerous or offensive, the state alone can be endangered or offended.

And are we then reduced to that miserable condition in this country, that, if discontent and sedition be publicly excited amongst the people, the charge of suppressing it devolves upon Mr. Jones? My learned friend, if he would have you believe that this dialogue is seditious and dangerous, must be driven to acknowledge, that government has grossly neglected its trust. For if, as he says, it has an evident tendency in critical times to stir up alarming commotions, and to procure a reform in the representation of the people by violence and force of arms; and if, as he likewise says, a publick prosecution is a proceeding calculated to prevent these probable consequences; what excuse is he prepared to make for that government, which, when, according to the evidence of his own witness, an application was made by it for that express purpose, positively and on deliberation refused to prosecute? What will he say of one learned gentleman,\* who dead is lamented, and for another,† who

\* Mr. Wallace then Attorney General.

† Mr. Lee, late Attorney, then Solicitor General

living is honoured by the whole profession; both of whom on the first appearance of this dialogue, were charged with the duty of prosecuting all offenders against the state; yet who not only read it day after day in pamphlets and newspapers, without stirring against the publishers, but who, on receiving it from the lords of the treasury by official reference, opposed a prosecution at the national expense? What will he say of the successors of these gentlemen, who hold their offices at this hour, and who have ratified the opinions of their predecessors by their own conduct? And what, lastly, will he say in vindication of majesty itself, to my knowledge not unacquainted with the subject; yet from whence no orders issued to the inferior servants of the state?

So that after Mr. Fitzmaurice, representing this dialogue as big with ruin to the publick, has been laughed at by the king's ministers at the treasury; by the king himself, of whom he had an audience, and by those appointed by his wisdom to conduct all prosecutions by the publick; yet you are still called upon to believe that it is a libel dangerous and destructive; and that while the state, neglected by those who are charged with its preservation, is tottering to its centre, the falling constitution of this ancient nation is happily supported by Mr. Jones, who, like another Atlas, bears it upon his shoulders.

Mr. Jones then, who sits before you, is the only man in England who accuses the defendant; he alone takes upon himself the important office of dictating to his majesty, of reprobating the proceedings of his ministers, and of superceding his attorney and solicitor general; and shall I insult your understandings by supposing that this accusation proceeds either from patriotism and publick spirit in himself, or in that other gentleman whose deputy he appears to be upon this occasion!

Whether such a supposition would not indeed be an insult, his conduct as a publick prosecutor will best illustrate.



He originally put the indictment in a regular course of trial in the very neighbourhood where its operations must have been most felt, and where, if criminal in its objects, the criminality must have been the most obvious. A jury of that country was assembled to try it; and the dean having required my assistance on the occasion, I travelled two hundred miles with great inconvenience to myself, to do him that justice which he was entitled to as my friend and fellow citizen and to pay to my country that tribute which was due from me when the liberty of the press was invaded.

The jury thus assembled, was formed from the first characters in that country; men who would have willingly doomed to death the wretch who, in the language of the indictment, had sought to excite disaffection to the person of the king, and an armed rebellion against his government: yet when such a jury was empannelled, and such names found upon it as Sir Watkyn Williams Wynne, and others not less respectable, this publick spirited prosecutor, who had no other object than publick justice, was confounded and appalled; he said to himself, this will never do, for all these gentlemen know, not only that the paper is not in itself a libel; but that it neither was nor could be published by the Dean with a libellous intention; and, what is worse than all, they are men of too proud an honour to act upon any persuasion or authority, against the conviction of their own consciences. But how shall I get rid of them? They are already struck and empannelled, and neither integrity nor sense are challenges to jurors.

Gentlemen, in this dilemma, he produced an affidavit, which appeared to me not very sufficient for the purpose of evading the trial, but which as those who upon that occasion have to decide that question upon their oaths, were of a different opinion; I shall not support my own by any arguments, meaning to conduct myself to day, as I always have and shall, with reverence to the administration of justice. I

shall, therefore, content myself with stating that the affidavit contained no other matter than that there had been published at Wrexham, an extract from Dr. Towers's Biography, containing accounts of trials for libels published above a century ago, from which the jurors, if it had fallen in their way, might have been informed of their right to judge their fellow citizens for crimes affecting their liberties or their lives; a doctrine not often disputed, and never without the vindication of it by the greatest and most illustrious names in the law. But, says this publick-spirited prosecutor, if the jury are to try this, I must withdraw my prosecution; for they are men of honour and sense; they know the constitution of their country, and they know the dean of St. Asaph; and I have therefore nothing left but to apply to the judges, suggesting that the minds of the special jury are so prejudiced by being told that they are Englishmen, and as such have the power of acquitting a defendant accused of a crime if they think him innocent, that they are unfit to sit in judgment upon him. Gentlemen, the scheme succeeded, and I was put in my chaise, and wheeled back again, with the matter in my pocket which had postponed the trial; matter which was to be found in every shop in London, and which had been equally within the reach of every jurymen who had sat upon a jury since the times of king Charles the second.

Gentlemen, in this manner above a year ago Mr. Jones deprived my reverend friend of an honourable acquittal in his own country; and it is a circumstance material in the consideration of this indictment, because in the administering publick justice, you will, I am persuaded, watch with jealousy to discover whether publick justice is the end and object of the prosecution: and in trying whether my reverend client proceeded *malo animo* in the publication of this dialogue, you will certainly obtain some light from examining *quo animo*, the prosecutor has arraigned him before you.

When the indictment was brought down again to trial at the next following assizes, there were no more pamphlets to form a pretext for procrastination. I was surprised, indeed, that they did not employ some of their own party to publish one; and have recourse to the same device which had been so successful before; but this mode either did not strike, or was thought to be but fruitlessly delaying the acquittal which could not be ultimately prevented.

The prosecutor, therefore, secretly sued out a writ of certiorari from the court of King's Bench, the effect of which was to remove the indictment from the court of great sessions in Wales, and to bring it to trial as an English record in an English county. Armed with this secret weapon to defeat the honest and open arm of justice, he appeared at Wrexham, and gave notice of trial, saying to himself, "I will keep it a secret that I have the king's writ, till I see the complexion of the jury; if I find them men fit for my purpose, either as the prostitutes of power, or as men of little minds, or from their insignificance equally subject to the frown of authority, and the blandishments of corruption, so that I may reasonably look for a sacrifice, instead of a trial, I will then keep the certiorari in my pocket, and the proceedings will of course go forward: but if on the contrary, I find such names as I found before; if the gentlemen of the county are to meet me, I will then, with his majesty's writ in my hand, discharge them from giving that verdict of acquittal, which their understandings would dictate and their consciences impose."

Such, without any figure, I may assert to have been the secret language of Mr. Jones to himself, unless he means to slander those gentlemen in the face of this court, by saying that the jurors, from whose jurisdiction he, by his *certiorari* withdrew the indictment, were not impartial, intelligent, and independent men; a sentiment which he dares not

presume even to whisper, because in publick or in private he would be silenced by all who heard it.

From such a tribunal this publick spirited prosecutor shrunk a second time; and just as I was getting out of my chaise at Wrexham, after another journey from the other side of the island, without even notice of an intention to postpone the trial, he himself in person, his counsel having, from a sense of honour and decency refused it, presented the king's writ to the chief justice of Chester, which dismissed the dean for ever from the judgment of his neighbours and countrymen, and which brings him before you to day.

What opinion then must the prosecutor entertain of your honour and your virtues, since he evidently expects from you a verdict, which it is manifest from his conduct he did not venture to hope for from such a jury as I have described to you?

Gentlemen, I observe an honest indignation rising in all your countenances on the subject, which, with the arts of an advocate, I might easily press into the service of my friend; but as his defence does not require the support of your resentments, or even of those honest prejudices to which liberal minds are but too open without excitation, I shall draw a veil over all that may seduce you from the correctest and the severest judgment.

Gentlemen, the dean of St. Asaph is indicted by the prosecutor, not for having published this little book; that is not the charge: but he is indicted of publishing a false, scandalous, and malicious libel, and of publishing it (I am now going to read the very words of the charge) "with a malicious design and intention to infuse among the subjects of this realm, jealousies and suspicions of the king and his government; to create disaffection to his person; to raise seditions and tumults within the kingdom; and to excite his majesty's subjects to attempt, by armed rebellion and violence, to subvert the state and constitution of the nation."

These are not words of form, but of the very essence of the charge. The defendant pleads that he is not guilty, and puts himself upon you, his country; and it is fit, therefore, that you should be distinctly informed of the effect of a general verdict of guilty on such an issue, before you venture to pronounce it. By such a verdict you do not merely find that the defendant published the paper in question; for if that were the whole scope of such a finding, involving no examination into the merits of the thing published, the term guilty might be wholly inapplicable and unjust; because the publication of that which is not criminal cannot be a crime; because a man cannot be guilty of publishing that which contains in it nothing which constitutes guilt. This observation is confirmed by the language of the record; for if the verdict of guilty involved no other consideration than the simple fact of publication, the legal term would be, *that the defendant PUBLISHED*, not that he was GUILTY, of publishing; yet those who tell you that a general verdict of guilty comprehends nothing more than the fact of publishing, are forced in the same moment to confess, that if you found that fact alone without applying to it the epithet of *guilty*, no judgment or punishment could follow from your verdict; and they therefore call upon you to pronounce that guilt which they forbid you to examine into, acknowledging at the same time, that it can be legally pronounced by none but you: a position shocking to conscience, and insulting to common sense.

Indeed, every part of the record exposes the absurdity of a verdict of *guilty*, which is not founded on a previous judgment that the matter indicted is a libel, and that the defendant published it with a criminal intention; for if you pronounce the word *guilty*, without meaning to find sedition in the thing published, or in the mind of the publisher, you expose to shame and punishment that innocence which you mean to protect; since the instant that you say the defendant is *guilty* the gentleman who sits under

my lord, is bound by law to record him *guilty in manner and form as he is accused*; that is guilty of publishing a seditious libel with a seditious intention; and the court above is likewise bound to put the same construction on your finding. And thus without inquiry into the only circumstance which can constitute guilt, and without meaning to find the defendant guilty, you may be seduced into a judgment which your conscience may revolt at, and your speech to the world deny; but which the authors of this system have resolved that you cannot explain to the court, that is to punish the defendant on the authority of your intended verdict of acquittal.

As a proof that this is the plain and simple state of the question, I might venture to ask the learned judge, what answer I should receive from the court of King's Bench, if you were this day to find the dean of St. Asaph guilty but without meaning to find it a libel, or that he published it with a wicked and seditious purpose; and I on the foundation of your wishes and opinions, should address myself thus to the court when he was called up to judgment:

“My lords, I hope that in mitigation of my client's punishment, you will consider that he published it with perfect innocence of intention, believing on the highest authorities, that every thing contained in it was agreeable to the laws and constitution of his country; and that your lordships will further recollect that the jury, at the trial, gave no contrary opinion, finding only the fact of publication.”

Gentlemen, if the patience and forbearance of the judges permitted me to get to the conclusion of such an absurd speech, I should hear this sort of language from the court in answer to it: “We are surprised, Mr. Erskine, at every thing we have heard from you. You ought to know your profession better, after seven years practice of it, than to hold such a language to the court: you are estopped by the verdict of guilty, from saying he did not publish with a seditious intention, and we cannot listen to the declara-

tions of jurors in contradiction to their recorded judgment."

Such would be the reception of such a defence; and thus you are asked to deliver over the dean of St. Asaph into the hands of the judges of a court, humane and liberal indeed, but who could not betray their oaths, because you had set them the example by betraying yours, and who would therefore be bound to believe him criminal, because you had said so on the record, though in violation of your genuine opinions—opinions which as ministers of the law, they could neither act upon, nor even advert to their existence.

The conduct of my friend, Mr. Bearcroft upon this occasion, who always conducts himself with wisdom and discretion, is a farther confirmation of the truth of all these observations; for, if your duty had been confined to the simple question of publication, his address to you would have been nothing more, than that he would call his witnesses to prove the fact, that the dean published this paper, instead of enlarging to you, as he has done with great ability, on the libellous nature of the publication. There is, therefore, a gross inconsistency in his address to you, not from want of his usual precision, but because he is hampered by his good sense in stating an absurd argument, which happens to be necessary for his purpose; for he sets out with saying, that if you shall be of opinion it has no tendency to excite sedition, you must find him *not guilty*; and ends with telling you, that whether it has or has not such tendency, is a question of law for the court, and foreign to the present consideration.

It requires, therefore, no other faculty than that of keeping awake, to see through the fallacy of such doctrines; and I shall therefore proceed to lay before you the observations I have made upon this dialogue, which you are desired to censure as a libel.

I have already observed, and it is indeed on all hands admitted, that if this be libellous at all, it is a libel on the publick government, and not the slander of any private man.

Now to constitute a libel upon the government, one of two things appears to me to be absolutely necessary. The publication must either arraign and misrepresent the general principles on which the constitution is founded, with a design to render the people turbulent and discontented under it; or admitting the good principles of the government in the abstract, must accuse the existing administration with a departure from them.

Let us try this little pamphlet by these touchstones, and let the defendant stand or fall by the test.

The beginning of this pamphlet, and indeed the evident and universal scope of it, is to render our happy constitution, and the principles on which it is founded, well understood by all that part of the community which are out of the pale of that knowledge by liberal studies and scientifick reflections;—a purpose truly publick spirited, and which could not be better effected than by having recourse to familiar comparisons drawn from common life, more suited to the frame of unlettered minds, than abstract observations. It was this consideration that led sir William Jones, a gentleman of great learning and excellent principles, to compose this dialogue, and who, immediately after avowing himself the author of it, was appointed by the king to be one of the supreme judges of our Asiatick empire; where if we reflect on the transactions of its governments, he would hardly have been selected to preside, if his work had been thought seditious.

Of this I am sure, that his intentions were directly the contrary, and that he thought and felt, as all men of sense must feel and think, that there was no mode so likely to inculcate obedience to government in an Englishman, as to make himself acquainted with its principles; since the English constitution must always be loved, cherished and revered, exactly in the proportion that it is understood.

He therefore divested his mind of all those classical refinements which so remarkably characterize it, and composed this simple and natural dialogue between a



gentleman and a farmer, in which the gentleman, meaning to illustrate the great principles of publick government, by comparing them with the lesser combinations of society, asks the farmer, what is the object of the little club in the village, of which he is a member; and if he is a member of it on compulsion, or by his free consent?—If the president is self appointed, or rules by election?—If he would submit on his taking the money from the box without the vote of the members?—with many other questions of a similar tendency; and being answered in the negative, he very luminously brings forward the analogy by making the gentleman say to him, “did it never occur to you that every state is but a great club?” or in other words, that the greater as well as the lesser societies of mankind are held together by social compacts, and that the government of which you are a subject, is not the rod of oppression, in the hands of the strongest, but is of your own creation; a voluntary emanation from yourself, and directed to your own advantage?

Mr. Bearcroft, sensible that this is the just and natural construction of that part of the dialogue, is very desirous to make you believe that the other part of it, touching the reform in the representation of the people in parliament, has no reference to that context, but it is to be connected with all that follows, about bearing arms. I must therefore beg your attention to that part of the publication, which will speak plainly for itself.

The gentleman says to the farmer, on his telling him he had no vote: “Do you know that six men in seven have, like you, no voice in the election of those who make the laws which bind your property and life? and then asks him to sign a petition which has for its object to render elections co-extensive with the trusts which they repose.

And is there a man upon the jury who does not feel that all the other advantages of our constitution are lost to us until this salutary object is attained; or,

who is not ready to applaud every man who seeks to attain it by means that are constitutional?

But, according to my friend, the means proposed were not constitutional, but rebellious. I will give you his own words, as I took them down: "The gentleman was saying very intelligibly, Sir, I desire you to rebel, to clothe yourself in armour, for you are cheated of your inheritance. How are you to rectify this? How are you to right yourselves? Learn the Prussian exercise."

But how does my friend collect these expressions from the words of the passages which are shortly these: "And the petition which I desired you to sign has only for its object the restoration of your right to choose your lawmakers."

I confess I am at a loss to conceive how the Prussian exercise finds its way into this sentence. It is a most martial way of describing pen and ink. Cannot a man sign a petition without tossing a firelock? I who have been a soldier, can do either; but I do not sign my name with a gun.

There is, besides, another difficulty in my friend's construction of the sentence. For the object of the petition is the choosing of lawmakers. But, according to him, there is to be an end of all lawmakers, and of all laws; for neither can exist under the Prussian exercise: and he must be a whimsical scholar who tells a farmer to sign a petition for the improvement of government; his real purpose being to set it upon the die of a rebellion, whether there should be any government at all.

But, let me ask you, gentlemen, whether such strained constructions are to be tolerated in a criminal prosecution, when the simple and natural construction of language falls indirectly with the fact? For you cannot but know, that, at the time when this dialogue was written, the table of the house of commons groaned with petitions presented to the house from the most illustrious names and characters, representing the most important communities in the nation; not with the threat of the Prussian exercise,

but with the prayer of humility and respect to the legislature, that some immediate step should be taken to avert that ruin which the defect in the representation of the people must sooner or later bring upon this falling empire.

I do not choose to enter into political discussions here. But we all know, that the calamities which have fallen upon this country have proceeded from that fatal source ; and every wise man must be therefore sensible, that a reform, if it can be attained without confusion, is a most desirable object.

But whether it be or not desirable, is an idle speculation here ; because, at all events, the Subject has a right to petition for what he thinks beneficial ; and however visionary you may think his petition, you cannot deny it to be constitutional and legal, and I may venture to assert, that this dialogue is the first abstract speculative writing which has been attacked as a libel since the revolution ; and from Mr. Bearcroft's admission, that the proceeding is not prudent, I may venture to foretell that it will be the last.

If you pursue this part of the dialogue to the conclusion, the false and unjust construction put upon it becomes more palpable : " Give me your pen," said the farmer, " I never wrote my name, ill as it may be written, with greater eagerness." Upon which the gentleman says, " I applaud you, and trust that your example will be followed by millions." What example?—Arms?—Rebellion?—Disaffection? No ! but that others might add their names to the petition which he had advised him to sign, until the voice of the whole nation reached parliament on the subject. That is the plain and obvious construction ; and it is not long since, that those persons in parliament with whom my friend associates, and with whom he acts, affected at least to hold the voice of the people of England to be the rule and guide of parliament ; and the gentleman in the dialogue knowing that the universal voice of the community could not be wisely neglected by the legislature, only expressed his wish that the petitions should not be partial, but universal.

With the expression of this wish every thing in the dialogue upon the subject of representation finally closes; and if you will only honour me with your attentions for a few moments longer, I will show you that the rest of the pamphlet is the most abstract speculation on government to be found in print; and that I was well warranted, when I told you some time ago that all its doctrines were to be found in the brightest pages of English learning, and in the most sacred volumes of English law.

The subject of the petition being finished, the gentleman says: "Another word before we part. What ought to be the consequence, if the king alone were to insist on making laws, or on altering them at his will and pleasure?" To which the farmer answers: "He too must be expelled." "Oh! but think of his standing army," says the gentleman, "and of the militia which now are his in substance, though ours in form." Farmer. "If he were to employ that force against the nation, they would and ought to resist him, or the state would cease to be a state." And now you will see that I am not contending for things that are wrong; for if this was pointed particularly to excite rebellion against the king of England, and to lead the people to believe that his majesty was, in the present course of his government, breaking through the laws, and therefore, on the principles of the constitution, was subject to expulsion, I admit that my client ought to be expelled from this and every other community. But is this proved? No! it is not even asserted. I say this in the hearing of a judge deeply learned in the laws, and who is bound to tell you, that there is nothing in the indictment which even charges such an application of the general doctrine. The gentleman who drew it is likewise very learned in his profession; and if he had intended such a charge he would have followed the rules delivered by the twelve judges in the house of lords, in the case of the *King against Horne*, and would have set out with saying, that, at the time of publishing the libel in question, there were petitions from all parts of England, desiring a reform in

the representation of the people in parliament ; and that the defendant knowing this, and intending to stir up rebellion, and to make the people believe that his majesty was ruling contrary to law, and ought to be expelled, caused to be published the dialogue. This would have been the introduction to such a charge ; and then, when he came to the words : “ He too must be expelled,” he would have said, by way of inuendo, *meaning thereby to insinuate, that the king was governing contrary to law and ought to be expelled ;*” which inuendo, though void in itself, without antecedent matter by way of introduction, when coupled with the introductory averment on the record, would have made the charge complete. Then I should have known what I had to defend my client against, and should have been prepared with witnesses to show you the absurdity of supposing that the dean ever imagined, or meant to insinuate, that the king was governing contrary to law. But the penner of the indictment, well knowing that you never could have found such an application, and that if it had been averred as the true meaning of the dialogue, the indictment must have fallen to the ground for want of such finding ; the inuendo was prudently left out ; yet you are desired by Mr. Bearcroft, to take that to be the true construction which the prosecutor durst not venture to submit to you by an averment in the indictment, and which not being averred is not all before you.

But if you attend to what succeeds you will observe that the writing is purely speculative, comprehending all the modes by which a government may be dissolved : for it is followed with ~~the~~ speculative case of injury to a government from bad ministers, and its constitutional remedy. Says the gentleman : “ What, if the great accountants and great lawyers of the nation were to abuse their trust, and cruelly injure, instead of faithfully serving the publick ; what in such case are you to do ?” Farmer. “ We must request the king to remove them, and make trial of others ; but none should implicitly be trusted.” Request

the king to remove them! Why, according to Mr. Bearcroft, you had expelled him the moment before.

Then follows a third speculation, of a government dissolved by an aristocracy, the king remaining faithful to his trust. The gentleman proceeds thus. "But what if a few great lords or wealthy men, were to keep the king himself in subjection, yet exert his force, lavish his treasure, and misuse his name, so as to domineer over the people and manage the parliament?" The farmer replies: "we must fight for the king and for ourselves." What? for the fugitive king whom the dean of St. Asaph had before expelled from the crown of these kingdoms! Here again the ridiculousness of Mr. Bearcroft's construction stares you in the face; but taking it as an abstract speculation of the ruin of a state by an aristocracy, it is perfectly plain.

When he first puts the possible case of regal tyranny, he states the remedy of expulsion; when of bad ministers to a good king, the remedy of petition to the throne; and when he supposes the throne to be overpowered by aristocratick dominion, he then says, "we must fight for the king and for ourselves."

If there had been but one speculation; namely, of regal tyranny, there might have been plausibility at least in Mr. Bearcroft's argument; but when so many different speculations are put, altogether repugnant to and inconsistent with each other, common sense tells every man that the writer is speculative, since no state of facts can suit them all.

Gentlemen, these observations, striking as they are, must lose much of their force, unless you carry along with you the writing from which they arise; and therefore I am persuaded that you will be permitted to day, to do what juries have been directed by courts to do on the most solemn occasions; that is, to take the supposed libel with you out of court, and to judge for yourselves whether it be possible for any conscientious or reasonable man to fasten upon it any other interpretation than that which I have laid before you.

If the dialogue is pursued a little further, it will be seen that all the exhortations to arms are pointed to the protection of the king's government and the liberty of the people derived from it. Says the gentleman: "you talk of fighting as if you were speaking of some rustick engagement; but your quarter staff would avail you little against bayonets." Farmer: "We might easily provide ourselves with better arms." "Not so easily," says the gentleman; "you ought to have a strong firelock;" what to do? look at the context.—For God's sake do not violate all the rules of grammar, by refusing to look at the next antecedent! take care to have a firelock. For what purpose? "To fight for the king and for yourself," in case the king, who is the fountain of legal government, should be kept in subjection by those great and wealthy lords, who might abuse his authority and insult his title. This, I assert, is not only the genuine and natural construction, but the only legal one it can receive from the court on this record; since in order to charge all this to be not merely speculative and abstract, but pointing to the king and his government, to the expulsion of our gracious sovereign, whom my reverend friend respects and loves, and whose government he reverences as much as any man who hears me, there should have been an introduction that there were such views and intentions in others, and that he knowing it, and intending to improve and foment them, wrote so and so; and then on coming to the words, *that the king must be expelled*, the sense and application should have been pointed by the averment, that he thereby meant to insinuate to the people of England, that the present king ought in fact to be expelled; and not speculatively, that under such circumstances it would be lawful to expel a king.

Gentlemen, if I am well founded in thus asserting, that neither in law nor in fact is there any seditious application of these general principles, there is nothing further left for consideration, than to see whether they be warranted in the abstract; a discussion hardly necessary under the government of his present majesty,

who holds his crown under the act of settlement made in consequence of the compact between the king and people at the revolution.

Gentlemen, what part you or I might have taken, if we had lived in the days of the Stuarts, and in the unhappiest of their days, which brought on the revolution, is foreign to the present question: whether we should have been found among those glorious names, who, from well directed principle, supported that memorable era, or amongst those who from mistaken principle opposed it, cannot affect our judgments to day. Whatever part we may conceive we should or ought to have acted, we are bound by the acts of our ancestors, who determined that there existed an original compact between king and people, who declared, that king James had broken it, and who bestowed the crown upon another.

The principle of that memorable revolution is fully explained in the bill of rights, and forms the most unanswerable vindication of this little book. The misdeeds of king James are drawn up in the preamble to that famous statute; and it is worth your attention, that one of the principal charges in the catalogue of his offences is, that he caused several of those subjects, whose right to carry arms is to day denied by this indictment, to be disarmed in defiance of the laws.

Our ancestors having stated all the crimes for which they took the crown from the head of their fugitive sovereign, and having placed it on the brows of their deliverer, mark out the conditions on which he is to wear it. They were not to be betrayed by his great qualities, or even by the gratitude they owed him, to give him an unconditional inheritance in the throne: but enumerating all their ancient privileges, they tell their new king in the body of the law, that while he maintains these privileges, and no longer than he maintains them, *he is king*.

The same wise caution which marked the acts of the revolution, is visible in the act of settlement on the accession of the house of Hanover, by which the crown was again bestowed, upon the strict condi-



tion of governing according to law, maintaining the protestant religion, and not being married to a papist.

Under this wholesome entail, *which again vindicates every sentence in this book*, may his majesty and his posterity hold the crown of these kingdoms for ever! a wish in which I know I am fervently seconded by my reverend client, and with which I might call the whole country to vouch for the conformity of his conduct.

But my learned friend, knowing that I was invulnerable here, and afraid to encounter those principles on which his own personal liberty is founded, and on the assertion of which his well earned character is at stake in the world, says to you with his usual artifice: "Let us admit that there is no sedition in this dialogue, let us suppose it to be all constitutional and legal; yet it may do mischief. Why tell the people so?"

Gentlemen, I am furnished with an answer to this objection, which I hope will satisfy my friend, and put an end to all disputes among us. For upon this head I will give you the opinion of Mr. Locke, the greatest whig that ever lived in this country, and likewise of Lord Bolingbroke, the greatest tory in it; by which you see that whigs and tories, who could never accord in any thing else, were perfectly agreed upon the propriety and virtue of enlightening the people on the subject of government.

Mr. Locke on this subject speaks out much stronger than the dialogue. He says in his treatise on government: "Wherever law ends tyranny begins; and whoever in authority, exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject which the law allows not, ceases in that to be a magistrate, and acting without authority, may be opposed as any other man who by force invades the right of another. This is acknowledged in subordinate magistrates. He that hath authority by a legal warrant to seize any person *in the street*, may be opposed as a thief and a robber if he endeavours to break *into my house* to execute it on me there, although I

know he has such a warrant as would have empowered him to arrest me abroad. And why this should not hold in the highest as well as in the most inferiour magistrate I would gladly be informed. For the exceeding the bounds of authority is no more a right in a great than in a petty officer, *in a king than in a constable*; but is so much the worse in him, that he has more trust put in him, and more extended evil follows from the abuse of it."

But then Mr. Locke, knowing that the most excellent doctrines, when they are perverted by wicked men who have their own private objects to lead them to that perversion, or by ignorant men who do not understand them, takes the very objection of my learned friend, Mr. Bearcroft, and puts it as follows into the mouth of his adversary, in order that he may himself answer and expose it. "But there are who say it lays a foundation for rebellion." Gentlemen, you will do me the honour to attend to this; for one would imagine Mr. Bearcroft had Mr. Locke in his hand when he was speaking.

"But there are who say it lays a foundation for rebellion, to tell the people that they are absolved from obedience when illegal attempts are made upon their liberties, and that they may oppose their magistrates when they invade their properties, contrary to the trust put in them; and that, therefore, the doctrine is not to be allowed, as libellous, dangerous, and destructive of the peace of the world."

But that great man instantly answers the objection which he had raised himself in order to destroy it, and truly says; "Such men might as well say, that the people should not be told that honest men may oppose robbers or pirates, lest it should excite to disorder and bloodshed."

What reasoning can be more just? for if we were to agree from the possibility that human depravity and folly may turn to evil what is meant for good, all the comforts and blessings which God, the author of indulgent nature has bestowed upon us, and without which we should neither enjoy nor indeed deserve our

existence ; would be abolished as pernicious, till we were reduced to the fellowship of beasts.

The Holy Gospels could not be promulgated, for though they are the foundation of all the moral obligations which unite men together in society, yet the study of them too often conducts weak minds to enthusiasm, madness, or false opinions.

The use of pistols should be forbid ; for though they are necessary instruments of self defence, yet men often turn them revengefully upon one another in private quarrels.

Fire ought to be prohibited ; for though under due regulations it is not only a luxury but a necessary of life, yet the dwellings of mankind and whole cities are often laid waste and destroyed by it.

Medicines and drugs should not be sold promiscuously ; for though, in the hands of skilful physicians, they are the kind restoratives of nature, yet they may be administered by quacks, and operate as poisons.

There is nothing, in short, however excellent, which wickedness or folly may not pervert from its intended purpose. But if I tell a man, in the agony of disease, that by taking my medicine he will be relieved ; will it induce him to destroy his constitution by taking it while he is in health ? Thus too, when a writer speculates on the ways by which human governments may be dissolved, and points out the remedies which history furnishes from the experience of former ages ; is he, therefore, to be supposed to prognosticate instant dissolution to the existing government, and to stir up sedition and rebellion against it ?

Having given you the opinions of Mr. Locke, published three years after the accession of king William, who caressed the author and raised him to the highest trusts in the state, let us look at the sentiments of a tory, on that subject, still more celebrated both in the republic of letters, and on the theatre of the world : I speak of the great lord Bolingbroke, who was in arms to restore king James to his forfeited

throne, and who was anxious to rescue the jacobites from what he thought a scandal on them; namely, that, because from the union of so many human rights centered in the person of king James, they preferred and supported his hereditary title on the footing of our own ancient civil constitutions; believing in his claim to govern *jure divino*, independent of the law.

This doctrine of passive obedience, which this prosecution seems to assert to be the law, and which certainly is the law, if this dialogue, which denies it, be a libel, was resented above half a century ago by this great writer, even in a tract written while an exile in France, on account of his treason against the house of Hanover. "The duty of the people," says his lordship, "is now settled upon so clear a foundation, that no man can hesitate how far he is to obey, or doubt upon what occasions he is to resist. Conscience can no longer battle with the understanding; we know that we are to defend the crown with our lives and fortunes, as long as the crown protects us, and keeps strictly to the bounds within which the laws have confined it. We know likewise, that we are to do it no longer."

He concludes three volumes of masterly and eloquent discussions on our government, with stating the duty imposed on every enlightened mind to instruct the people on the principles of our government, in the following animated passage: "The whole tendency of these discourses is to inculcate a rational idea of the nature of our free government into the minds of all my countrymen, and to prevent the fatal consequence of those slavish principles which are industriously propagated through the kingdom, by wicked and designing men. He who labours to blind the people, and to keep them from instruction on those momentous subjects, may be justly suspected of sedition and disaffection; but he who makes it his business to open the understandings of mankind, by laying before them the true principles of their government, cuts up all faction by the roots;

for it cannot but interest the people in the preservation of their constitution, when they know its excellence and its wisdom."

But, says Mr. Bearcroft, again and again, "are the multitude to be told all this?" I say as often on my part, yes. I say, that nothing can preserve the government of this free and happy country, in which, under the blessing of God, we live; nothing can make it endure to all future ages, but its excellence and its wisdom being known, not only to you and the higher ranks of men who may be overborn by a contentious multitude, but by disseminating among the great body of the people the true principles on which it is established; which shows them, that they are not the "hewers of wood and the drawers of water" to men who avail themselves of their labour and their industry; but that government is a trust proceeding from themselves; an emanation from their own strength; a benefit and a blessing, which has stood the test of ages: that they are governed because they desire to be governed, and yield a voluntary obedience to the laws, because the laws protect them in the liberties they enjoy.

Upon these principles I assert, with men of all denominations and parties who have written on the subject of free governments, that this dialogue, so far from misrepresenting or endangering the constitution of England, must disseminate obedience and affection to it; and that the comparison which it makes of great political institutions with the little club in the village, is a decisive mark of the honest intention of its author.

Does a member rebel against the president of his club while he fulfils his trust?—No; because he is of his own appointment, and acting for his comfort and benefit. This safe and simple analogy lying within the reach of every understanding, is therefore adopted by the scholar as the vehicle of instruction; and wishing the peasant to be sensible of the happy government of his country, and to be acquainted with the deep stake he has in its preservation, truly tells him, that a nation

is but a great club, governed by the same consent, and hanging together by the same voluntary compact, impressing upon his mind the great theory of publick freedom, by the most familiar allusions to the little but delightful intercourses of social life, by which men derive those benefits that come home the nearest to their bosoms.

Such is the wise and innocent scope of this dialogue, which, after it has been repeatedly published without censure, and without mischief, under the eye of government in the capital, is gravely supposed to have been circulated by my reverend friend, many months afterwards, with a malignant purpose to overturn the monarchy by an armed rebellion.

Gentlemen, if the absurdity of such a conclusion, from the nature of the dialogue itself, were not self evident, I might render it more glaring by adverting to the condition of the publisher. The affectionate son of a reverend prelate, not more celebrated for his genius and learning than for his warm attachment to the constitution, and in the direct road to the highest honours and emoluments of that very church, which, when the monarchy falls, must be buried in its ruins: nay, the publisher, a dignitary of the same church himself at an early period of his life, and connected in friendship with those who have the dearest interests in the preservation of the government, and who, if it continue, may raise him to the summits of his profession.

I cannot therefore forbear from wishing that somebody, in the happy moments of fancy, would be so obliging as to try to conjecture why my reverend friend should aim at the destruction of the present establishment; since you cannot but see, that the moment he succeeded, down comes his father's mitre, which leans against the crown, and away goes his own deanery, with all the rest of his livings; and neither you nor I have heard any evidence to enable us to guess at what he is looking for in their room.

Yet, in the face of all these absurdities, and without a colour of evidence from his character or conduct in any part of his life, he is accused of sedition ; and under the false pretence of publick justice, dragged out of his own country, deprived of that trial by his neighbours which is the right of the meanest man who hears me, and arraigned before you, who are strangers to those publick virtues, which would in themselves be an answer to this malevolent accusation. But when I mark your sensibility in the anxious attention you have bestowed ; when I reflect upon your characters, and observe from the pannel (though I am personally unknown to you) that you are men of rank in your own country, I know how these circumstances of injustice will operate ; and I therefore freely forgive the prosecutor for having fled from his original tribunal.

Gentlemen, I come now to a point very material for your consideration ; on which even my learned friend and I, who are brought here for the express purpose of disagreeing in every thing, can avow no difference of opinion ; on which judges of old and modern times, and lawyers of all interests and parties, have ever concurred ; namely, *that even if this innocent paper were admitted to be a libel, the publication would not be criminal, if you, the jury, saw reason to believe that it was not published by the dean with a wicked intention.* It is true, that if a paper containing seditious and libellous matter be published, the publisher is *prima facie* guilty of sedition ; the bad intention being a legal inference from the act of publishing : but it is equally true, that he may rebut that inference, by showing that he published it innocently.

This was declared by Lord Mansfield, in the case of the *King and Woodfall* ; where his lordship said, that the fact of publication would in that instance have constituted guilt, if the paper was a libel ; because the defendant had given no evidence to the jury to repel the legal inference of guilt, as arising from the publication ; but he said at the same time, in the

words that I shall read to you, that such legal inference was to be repelled by proof.

"There may be cases where the fact of a publication even of a libel may be justified or excused as lawful or innocent; but no fact which is not criminal, even though the paper be a libel, can amount to a publication of which a defendant ought to be found guilty."

I read these words from Burrow's Reports, published under the eye of the court; and they appear to me a decisive defence of the dean of St. Asaph upon the present occasion, and give you an evident jurisdiction to acquit him, even if the law upon libels, were as it is laid down to you by Mr. Bearcroft. For if I show you, that the publication arose from motives that were innocent, and not seditious, he is not a criminal publisher, even if the dialogue were a libel, and according to lord Mansfield ought not to be found guilty.

The dean of St. Asaph was one of a great many respectable gentleman, who, impressed with the dangers impending over the publick credit of the nation, exhausted by a long war, and oppressed with grievous taxes, formed themselves into a committee according to the example of other counties, to petition the legislature to observe great caution in the expenditure of the publick money. This dialogue being written by Sir William Jones, a near relation of the dean by marriage, was either sent, or found its way to him in the course of publick circulation. He knew the character of the author; he had no reason to suspect him of sedition or disaffection; and saw and believed it to be, what I at this hour believe, and have represented it to you, a plain, easy manner of showing the people the great interest they had in petitioning parliament for every thing beneficial to the publick. It was accordingly the opinion of the Flintshire committee, and not particularly of the dean as an individual, that the dialogue should be translated into Welch and published. It was accordingly delivered, at the desire of the



committee, to a Mr. Jones, for the purpose of translation. This gentleman, who will be called as a witness, told the dean a few days afterwards, that there were persons, not indeed from their real sentiments, but from spleen and opposition, who represented it as likely to do mischief, from ignorance and misconception, if translated and circulated in Wales.

Now, what would have been the language of the defendant upon this information, if his purpose had been that which is charged upon him by the indictment? He would have said: "If what you tell me be well founded, *hasten the publication*; my object is sedition; my plan is to excite a rebellion in Wales; I am sure I shall never raise one here, by the dissemination of such a pamphlet in English: therefore let it be instantly translated, if the ignorant inhabitants of the mountains are likely to collect from it, that it is time to take up arms."

But Mr. Jones will tell you, that, on the contrary, the instant that he suggested that such an idea, absurd and unfounded as he felt it, had presented itself from any motives to the mind of any man, the dean, impressed as he was with its innocence and its safety, instantly acquiesced, and recalled, even on his own authority, the intended publication by the committee: and the dialogue never was translated into the Welch tongue at all, nor circulated amongst that multitude, which Mr. Bearcroft is so desirous of keeping in darkness; as if obedience to free government, like bigotry to priestcraft, was to be upheld by ignorance and delusion.

Here the dean's connexion with this dialogue would have ended, if Mr. Fitzmaurice, who never lost any occasion of defaming and misrepresenting him, had not thought fit, near three months after the idea of translation was abandoned, to reprobate and condemn the dean's conduct at the publick meetings of the county, in the severest terms, for his former intention of circulating the dialogue in Welch; declaring that its doctrines were *seditions*,

*treasonable, and repugnant to the principles of our government.*

It was upon this occasion that the Dean, naturally anxious to redeem his character from the unjust aspersions of having intended to undermine the constitution of his country; conscious that the epithets applied to the dialogue were false and unfounded; and thinking that the production of it would be the most decisive refutation of the groundless calumny cast upon him, directed a few English copies of it to be published in vindication of his former opinions and intentions, prefixing an advertisement to it, which plainly marks the spirit in which he published it. For he there complains of the injurious misrepresentations I have adverted to, and impressed with the sincerest conviction of the innocence, or rather the merit of the dialogue, makes his appeal to the friends of the revolution in his justification.\*

Now, gentlemen, if you shall believe upon the evidence of the witness whom I shall bring before you, and of the advertisement prefixed to the publication itself (which is artfully kept back and forms no part of the indictment) that the Dean upon the authority of Sir William Jones who wrote it, and of the other great writers on the principles of our government, and of the history of the country itself, really thought the dialogue innocent and meritorious, and that his single purpose in publishing was the vindication of his character from sedition; then he is not guilty of this indictment, which charges the publication with a wicked intent to excite disaffection to the king, and rebellion against his government.

*Actus non facit reum nisi mens sit rea*, is the great maxim of penal justice, and stands at the top of the criminal page, in every volume of our humane and sensible laws. The hostile mind is the crime which it is our duty to decypher; and I am sure you will discharge it with the charity of Christians; refusing

\* Mr. Erskine here read the advertisement to the jury, as prefixed to the dialogue.

to adopt a harsh and cruel construction, when one that is fair and honourable is more reconcileable, not only with all probabilities, but with that evidence which you are sworn to make the foundation of your verdict. For the prosecutor rests on the single fact of publication, without the advertisement, and without being able to cast an imputation upon the defendant's conduct.

I shall on the other hand, show you that this sower of sedition has been lately honoured with the publick thanks of the country in which he lives, for his constitutional independent conduct; and shall bring before you the highest characters that inhabit it, to prove the anxiety which, in every part of his life, he has manifested for the publick, and the zeal with which, in stations both religious and civil, he has served it.

Gentlemen after the length of time, which very contrary to my inclination, I have detained you, I am sure you will be happy to hear that there is but one other point to which my duty obliges me to direct your attention.

I should, perhaps, have said nothing more concerning that particular province which belongs to you as a jury, upon this occasion, than the little I observed on it at the beginning, if my friend Mr. Bearcroft had not compelled me to it, by drawing a line around you, saying (I hope with the same effect that King Canute said to the sea) "thus far shall thou go." But since he has thought proper to coop you in, it is my business to let you out: and to give the greater weight to what I am about to say to you, I have no objection that every thing which I may utter shall be considered as proceeding from my own private opinions; and that not only my professional character, but my more valuable reputation as a man, and a member of society, may stand or fall by the principles which I shall lay down for the regulation of your judgments.

This is certainly a bold declaration, since what am I about to deliver may clash in some degree,

*though certainly it will not throughout*, with the decision of a great and reverend judge, who has administered the justice of this country for above half a century, with singular advantage to the publick, and distinguished reputation to himself; but whose extraordinary faculties and general integrity, which I should be lost to all sensibility if I did not acknowledge with reverence and affection, could not protect him from much obloquy when he appeared as the supporter of those doctrines which I am about to controvert. I shall certainly never join in the calumny that followed, because, I believe he acted upon that, as upon all other occasions, with the strictest integrity; an admission which it is my duty to make, and which I render with great satisfaction. It proves nothing more than that the greatest of men are fallible in their judgments, and warns us to decide from the essences of things, and not from the authority of names, however imposing.

Gentlemen, the opinion I allude to is, that *libel or no libel* is a question of law for the judge; your jurisdiction being confined to *the fact of publication*. If this was all that was meant by the position, though I could never admit it to be consonant with reason or law, it would not affect me in the present instance, since all that it would amount to, would be, that my lord, and not you, would deliver that opinion which would guide the present verdict. But what I am afraid of upon this occasion is, that neither of you are to give it; for so my friend has expressly put it. "My Lord," says he, "will probably not give you his opinion whether it be a libel or not, because, as he will tell you, it is a question open upon the record, and that if Mr. Erskine thinks the publication innocent, he may move to arrest the judgment." Now this is the most artful and mortal stab that can be given to justice and to my innocent client. All I wish is his lordship's judgment to guide yours in determining whether this pamphlet be, or be not a libel, because

knowing the scope of his understanding and professional ability, I have a moral certainty that his opinion would be favourable. If, therefore, libel or no libel be a question of law, as is asserted by Mr. Bearcroft, I call for his lordship's judgment upon that question, according to the regular course of all trials where the law and the fact are blended; in all which cases the notorious office of the judge is, to instruct the consciences of the jury to draw a correct legal conclusion from the facts in evidence before them. A jury are no more bound to return a special verdict in cases of libel, than upon other trials criminal or civil, where law is mixed with fact; but are to find generally upon both, receiving, as they constantly do receive in every court at Westminster, the opinion of the judge both on the evidence and the law.

Say the contrary who will, I assert this to be the genuine, unrepealed constitutional law of England; and therefore, if the learned judge shall tell you that this pamphlet is in the abstrast a libel; though I should not agree that you are therefore bound to find the defendant guilty unless you think so likewise, yet, I shall certainly think that it ought to have very great weight with you, and that you should not rashly, and without great consideration go against it. But if you are only to find the fact of publishing, which is not even disputed; and the judge is to tell you, that the matter being on the record, he will shut himself up in silence, and give no opinion at all as to the libellous and seditious tendency of the paper, and shall nevertheless expect you to affix the epithet of guilty to the publication of a thing the guilt of which you are forbid, and he refuses to examine; miserable indeed is the condition into which we are fallen! For should you, following such directions, bring in a verdict of guilty, without finding the publication a libel, or the publisher seditious; and I, afterwards, were, in mitigation of punishment, to apply to that humanity and mercy which is never deaf when it can be addressed consistently

with the law, I should be told in the language I before put in the mouths of the judges, "you are stopped, sir, by the verdict: we cannot hear you say your client was mistaken, but not guilty; for had that been the opinion of the jury, they had a jurisdiction to acquit him."

Such is the way in which the liberties of Englishmen are, by this new doctrine, to be shuffled about from jury to court, without having any solid foundation to rest on.

Gentlemen, I call this a new doctrine because, I do not find it supported by that current of ancient precedents which constitutes English law.

The history of seditious libels is, perhaps, one of the most interesting subjects which can agitate a court of justice, and my friend thought it prudent to touch but very slightly upon it.

We all know that by the immemorial usage of this country, no man in a criminal case could ever be compelled to plead a special plea: for, although, our ancestors settled an accurate boundary between law and fact, obliging the defendant who could not deny the latter, to show his justification to the court; yet a man accused of a crime had always a right to throw himself by a general plea upon the justice of his peers; and on such general issue, his evidence to the jury might be even as broad and general, as if he had pleaded a special justification. The reason of this distinction is obvious.

The rights of property depend upon various intricate rules, which require much learning to adjust, and much precision to give them stability; but crimes consist wholly in intention; and of that which passes in the breast of an Englishman as the motives of his actions, none but an English jury shall judge.—It is therefore impossible, in most criminal cases, to separate law from fact; and consequently whether a writing be or be not a libel, never can be an abstract legal question for judges. And this position is proved by the immemorial practice of courts, the forms of which, are founded in legal reason: for every li-

bel, over which it seems you are not to entertain any jurisdiction, is always read, and often delivered to you out of court for your consideration.

The administration of criminal justice in the hands of the people, is the basis of all freedom. While that remains there can be no tyranny, because the people will not execute tyrannical laws on themselves. Whenever it is lost, liberty must go along with it, because the sword of justice falls into the hands of men, who, however independent, have no common interest with the mass of the people.

Our whole history is therefore chequered with the struggle of our ancestors to maintain this important privilege, which in cases of libel has been too often a shameful and disgraceful subject of controversy. For the ancient government of this country not being founded, like the modern, upon that knowledge which the people have of its excellence, but supported by ancient superstitions and the lash of power, it is no wonder that it saw the seeds of its own destruction in a free press.

Printing, therefore, upon the revival of letters, when the lights of philosophy led to the detection of these prescriptive usurpations, was considered as a matter of state, and subjected to the control of licensers appointed by the crown: and although our ancestors had stipulated by Magna Charta, that no freeman should be judged but by his peers, the courts of star-chamber and high commission, consisting of privy counsellors erected during pleasure, opposed themselves to that freedom of conscience and civil opinion, which even then were laying the foundations of the revolution.

Whoever wrote on the principles of government was pilloried in the star-chamber, and whoever exposed the errors of a false religion, was persecuted by the commission court.

But no power can supersede the privileges of men in society, when once the lights of science have arisen amongst them. The prerogatives which former princes exercised with safety, and even with popularity,

were not to be tolerated in the days of the first Charles, and our ancestors insisted that these arbitrary tribunals should be abolished. Why did they insist upon their abolition? Was it that the question of libel, which was their principal jurisdiction, should be determined only by the judges at Westminster?—In the present times, even such a reform, though very defective, might be salutary, because the judges are now free, honourable, independent, and sagacious men; but in those days they were profligate wretches; instead, therefore, of admiring the wisdom of our ancestors, if that had been their policy, I should have held them up as lunatick to the scoff of posterity; since, at the period when these unconstitutional tribunals were supplanted, the courts at Westminster-Hall were filled with judges equally the tools of power as those in the star-chamber. The whole purpose of the change moreover, regarded a principle, which was then never disputed; namely, That the judges at Westminster, in criminal cases, were but a part of the court, and could only administer justice through the medium of a jury.

When the people, by the aid of an upright parliament, succeeded in reviving the constitutional trial by the country, the next course taken by the ministers of the crown, was to pollute what they could not destroy. Sheriffs devoted to power were appointed, and corrupt juries packed to sacrifice the rights of their fellow citizens, under the mask of popular trial. This was practised by Charles the Second; and was made one of the charges against king James, for which he was expelled the kingdom.

When juries could not be found to their minds, judges were daring enough to brow-beat juries, and to dictate to them what they called the law; and in Charles the Second's reign an attempt was made, which, if it had proved successful, would have been decisive.

In the year 1670, Penn and Mead, two quakers, being indicted for *seditionously* preaching to a multitude *tumultuously* assembled in Grace-church street, were



tried before the Recorder of London, who told the jury that they had nothing to do but to find whether the defendants had preached or not; for that, as to whether the matter or the intention of their preaching were seditious, these were questions of law and not of fact, with which they had nothing to do. Of the fact they were alone to decide.

The jury after some debate, found Penn guilty of speaking to people in Grace-church street; and on the Recorder's telling them that they meant, no doubt, that he was speaking to a tumultuous meeting there; he was informed by the foreman, that they allowed of no such words in their finding, but adhered to their former verdict. The recorder refused to receive it, and desired them to withdraw, on which they again retired, and brought in a general verdict of acquittal; which the court considering as a contempt, set a fine of forty marks upon each of them, and sentenced them to lie in prison till the fine was paid. Edward Bushel, one of the jurors (to whom we are almost as much indebted as to Mr. Hampden, who brought the case of ship money before the court of Exchequer) refused to pay his fine, and, being imprisoned in consequence of the refusal, sued out his writ of habeas corpus, which, with the cause of his commitment, namely, his refusing to find according to the direction of court in matter of law, was returned by the sheriffs of London to the court of common pleas; when lord chief justice Vaughan, to his immortal honour, addressed himself thus:

“ We must take off this veil and colour of words, which make a show of being something, but are in fact nothing. If the meaning of these words: *finding against the direction of the court in matter of law*, be, that if the judge, having heard the evidence given in court (for he knows no other) shall tell the jury upon this evidence, that the law is for the crown, and they, under the pain of fine and imprisonment, are to find accordingly; every man sees that the jury is but a troublesome delay, great charge, and of no use in determining right and wrong; and therefore the trials by them may be better abolished than continued;

which were a strange and new founded conclusion, after a trial so celebrated for many hundred of years in this country."

He then applied this sound doctrine with double force to criminal cases, and discharged the upright juror from his illegal commitment.

This determination of the right of juries to find a general verdict was never afterwards questioned by succeeding judges; not even in the great case of the seven bishops, on which the dispensing power and the personal fate of king James himself, in a great measure depended.

These conscientious prelates were, you know, imprisoned in the Tower, and prosecuted by information for having petitioned king James the Second to be excused from reading, in their churches, the declaration of indulgence contrary to law. The trial was had at the bar of the court of King's Bench, when the attorney general of that day, rather more peremptorily than my learned friend (who is much better qualified for that office, and whom I should be glad to see in it) told the jury, that they had nothing to do but with the bare fact of publication, and said he should therefore make no answer to the arguments of the bishop's counsel, as to whether the petition was, or was not a libel. But chief justice Wright (no friend to the liberty of the subject, and with whom I should be as much ashamed to compare my lord, as Mr. Bearcroft to that attorney general) interrupted him and said, "Yes, Mr. Attorney, I will tell you what they offer, which it will lie upon you to answer; they would have you show the jury how this petition has disturbed the government, or diminished the king's authority." So I say. I would have Mr. Bearcroft show you, gentlemen, how this dialogue has disturbed the king's government, excited disloyalty and disaffection to his person, and stirred up disorders within these kingdoms.

In the case of the bishops, Mr. Justice Powell followed the chief justice, saying to the jury, "I have given my opinion; *but the whole matter is before you,*

*gentlemen, and you will judge of it."* Nor was it withdrawn from their judgment. For although the majority of the court were of opinion that it was a libel, and had so publicly declared themselves from the bench, yet by the unanimous judgment of all the judges, after the court's own opinion had been pronounced, by way of charge to the jury, the petition itself which contained no innuendoes to be filled up as facts, was delivered into their hands to be carried out of court for their deliberation. The jury accordingly withdrew from the bar carrying the libel with them; and, puzzled, I suppose, by the infamous opinion of the judges, were most of the night in deliberation. All London surrounding the court with anxious expectation for that verdict, which was to decide whether Englishmen were to be freemen or slaves. Gentlemen, the decision was in favour of freedom, for the reverend fathers were acquitted; and though acquitted in direct opposition to the judgment of the court; yet it never occurred even to these arbitrary men who presided in it to cast upon them a censure or a frown.

This memorable and never to be forgotten trial, is a striking monument of the importance of these rights, which no juror should ever surrender. For if the legality of the petition had been referred as a question of law to the court of King's Bench, the bishops would have been sent back to the Tower, the dispensing power would have acquired new strength, and perhaps the glorious era of the revolution and our present happy constitution had been lost.

Gentlemen, I ought not to leave the subject of these doctrines, which, in the libels of a few years past, were imputed to the noble earl of whom I formerly spoke, without acknowledging that lord Mansfield was neither the original author of them, nor the copier of them from these impure sources: it is my duty to say, that lord chief justice Lee, in the case of the king against Owen, had recently laid down the same opinions before him. But then, both of these great

judges always conducted themselves on trials of this sort, as the learned judge conducts himself to day, considering the jury as open to all the arguments of the defendants counsel. And particularly in the case of Owen, who was acquitted against the direction of the court, the present lord Camden addressed the jury, not as I am addressing you, but with all the eloquence for which he is so justly celebrated.

The practice, therefore, of these great judges is a sufficient answer to their opinions. For if it be the law of England, that the jury cannot decide on the question of libel, the same law ought to extend its authority to prevent their being told by counsel that they may.

There is, indeed, no end to the absurdities which such a doctrine involves. For suppose that this prosecutor, instead of indicting my reverend friend for publishing this dialogue, had indicted him for publishing the bible, beginning at the first book of Genesis, and ending at the end of the Revelations, without the addition or subtraction of a letter, and without an *innuendo* to point out a libellous application, only putting in at the beginning of the indictment that he published it with a blasphemous intention. On the trial for such a publication, Mr. Bearcroft would gravely say: "Gentlemen of the jury, you must certainly find by your verdict, that the defendant is guilty of this indictment; that is, guilty of publishing the bible with the intentions charged by it. To be sure, every body will laugh when they hear it, and the conviction can do him no possible harm; for the court of king's bench will determine that it is not a libel, and he will be discharged from the consequences of the verdict."

Gentlemen, I defy the most ingenious man living to make a distinction between that case and the present; and in this way you are desired to sport with your oaths, by pronouncing my reverend friend to be a criminal without either determining yourselves, or having a determination, or even an insinuation from

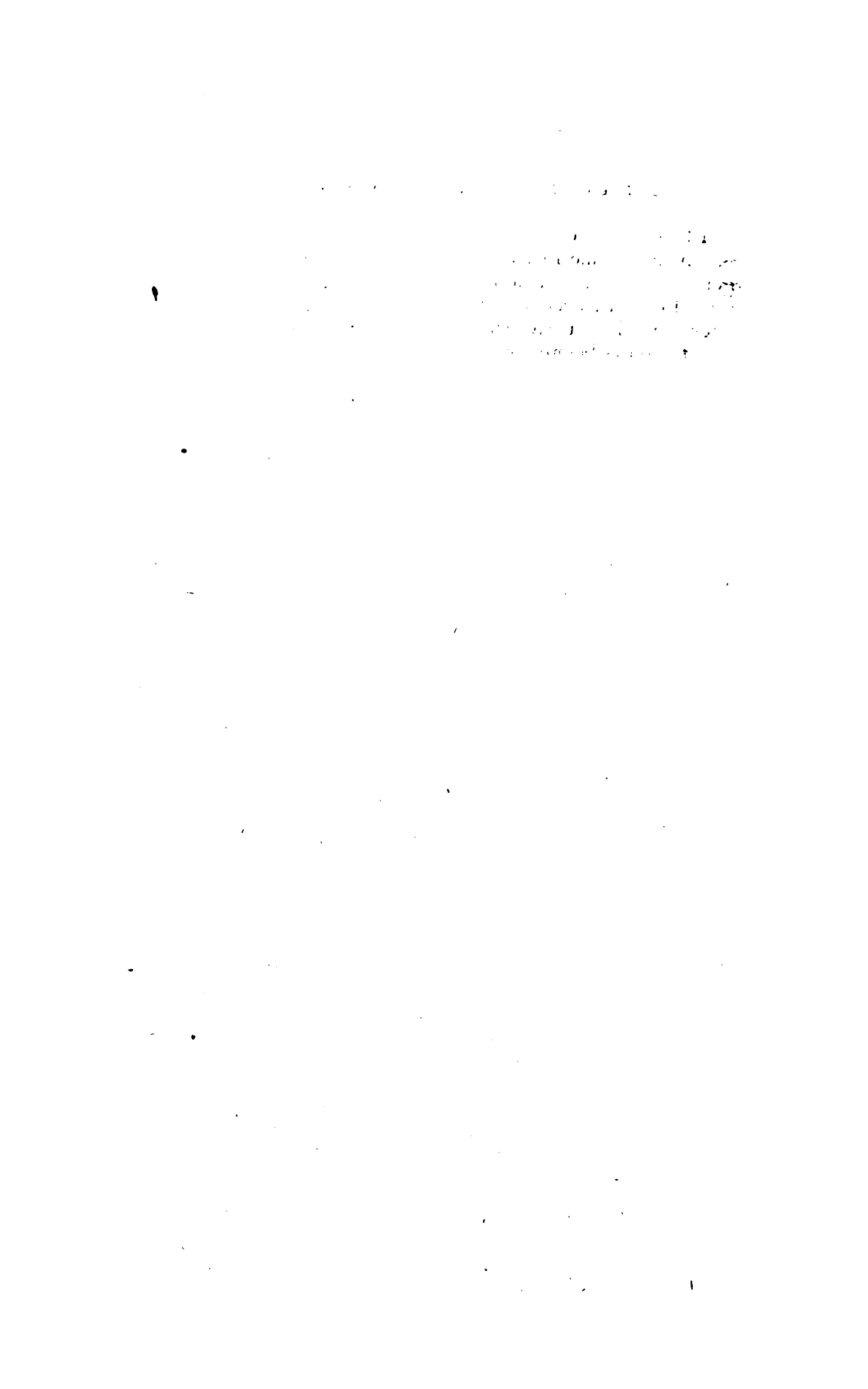
the judge that any crime has been admitted; following strictly that famous and respectable precedent of Radamanthus, judge of hell, who punishes first, and afterwards institutes an inquiry into the guilt.

But it seems your verdict would be no punishment if, judgment on it was afterwards arrested. I am sure, if I thought the Déan so lost to sensibility as to feel no punishment, he should find another counsel to defend him. But I know his nature better. I know that conscious as he is of his own purity, he would leave this court hanging down his head in sorrow, if he were held out by your verdict a seditious subject, and a disturber of the peace of his country; and that he would feel the arrest of judgment, which would follow in the term upon his formal appearance in court as a criminal, to be a cruel insult upon his innocence, rather than a triumph over the unjust prosecutors of his pretended guilt.

Let me, therefore, conclude, with reminding you, gentlemen, that if you find the defendant guilty, not believing that the thing published is a libel, or that the intention of the publisher was seditious, your verdict and your opinion will be at variance, and it will then be between God and your own consciences to reconcile the contradiction.

As the friend of my client, and the friend of my country, I shall feel much sorrow, and you yourselves will probably hereafter regret it, when the season of reparation is fled. But why should I indulge such unpleasant apprehensions, when in reality I fear nothing? I know it is impossible for English gentlemen, sitting in the place you do, to pronounce this to be a seditious paper; much less upon the bare fact of publication, explained by the prefixed advertisement, and the defendant's general character and deportment, to give credit to that seditious purpose which is necessary to convert the publication even of a libel itself into a crime.

I beg pardon of my lord, and of you, gentlemen, for the long time I have trespassed upon your indulgent and patient attention; nothing, indeed, but the duty I owe my client could have induced me to do it, after the fatigue I have sustained in a very long journey to appear before you.



## THE ARGUMENT

OF THE HON. THOMAS ERSKINE,

IN THE COURT OF KING'S BENCH, WESMINSTER, ON THE FIFTEENTH OF NOVEMBER, 1784, IN SHOWING CAUSE WHY A NEW TRIAL SHOULD BE GRANTED TO THE DEAN OF ST. ASAPH.\*

**I** AM now to have the honour to address myself to your lordship, in support of the rule granted to me by the court upon Monday last, which, as Mr. Bearcroft has truly said, and seemed to mark the observation with peculiar emphasis, is a rule for a new trial. Much of my argument, according to his notion, points another way; whether its direction be true, or its force adequate to the object, it is now my business to show.

In rising to speak at this time, I feel all the advantage conferred by the reply over those whose arguments are to be answered; but I feel a disadvantage likewise, which must suggest itself to every intelligent mind.

In following the objections of so many learned persons, offered in different arrangements upon a subject so complicated and comprehensive, there is much danger of being drawn from that method and order which can alone fasten conviction upon unwilling minds, or drive them from the shelter which ingenuity never fails to find in the labyrinth of a desultory discourse.

\* Vide preface to the preceding speech.



The sense of that danger, and my own inability to struggle against it, led me originally to deliver to the court, certain written and maturely considered propositions, from the establishment of which, I resolved not to depart, or to be removed, either in substance or in order, in any stage of the proceedings, and by which I must therefore this day, unquestionably stand or fall.

Pursuing this system I am vulnerable two ways, and in two ways only. Either it must be shown that my propositions are not valid in law, or admitting their validity, that the learned judge's charge to the jury at Shrewsbury was not repugnant to them: there can be no other possible objections to my application for a new trial.

My duty to day is, therefore obvious and simple: it is, first, to re-maintain those propositions; and then to show, that the charge delivered to the jury at Shrewsbury was founded upon the absolute denial and reprobation of them.

I begin, therefore, by saying again in my own original words, that when a bill of indictment is found, or an information filed, charging any crime or misdemeanor known to the law of England, and the party accused puts himself upon the country by pleading the general issue, not guilty:—the jury are *GENERALLY* charged with his deliverance from that *CRIME*, and not *SPECIALLY* from the fact or facts, in the commission of which the indictment or information charges the crime to consist; much less from any single fact, to the exclusion of others charged upon the same record.

Secondly, That no act which the law in its general theory holds to be criminal, constitutes in itself a crime abstracted from the mischievous intention of the actor. And that the intention, even where it becomes a simple inference of legal reason from a fact or facts established, may, and ought to be collected by the jury, with the judge's assistance. Because the act charged, though established as a fact in a trial *on the general issue*, does not necessarily

and unavoidably establish the criminal intention by any **ABSTRACT** conclusion of law; the establishment of the fact being still no more than full evidence of the crime, but not the crime itself; unless the jury render it so themselves, by referring it voluntarily to the court by special verdict.

These two propositions, though worded with cautious precision, and in technical language, to prevent the subtilty of legal disputation in opposition to the plain understanding of the world, neither do nor were intended to convey any other sentiment than this, namely, that in all cases where the law either directs or permits a person accused of a crime to throw himself upon a jury for deliverance, by pleading *generally* that he is not guilty, the jury, thus legally appealed to, may deliver him from the accusation by a general verdict of acquittal (founded as in common sense it evidently must be) upon an investigation as general and comprehensive as the charge itself from which it is a general deliverance.

Having said this, I freely confess to the court, that I am much at a loss for any further illustration of my subject; because I cannot find any matter by which it might be further illustrated, so clear, or so indisputable, either in fact or in law, as the very proposition itself which upon this trial has been brought into question.

Looking back upon the ancient constitution, and examining with painful research the original jurisdictions of the country, I am utterly at a loss to imagine from what sources these novel limitations of the rights of juries are derived. Even the bar is not yet trained to the discipline of maintaining them. My learned friend, Mr. Bearcroft, solemnly abjures them: he repeats to day what he avowed at the trial, and is even jealous of the imputation of having meant less than he expressed; for, when speaking this morning of the *right* of the jury to judge of the whole charge, your lordship corrected his expression, by telling him he meant the *power*, and not the *right*; he caught instantly at your words, disavowed your explanation,

and, with a consistency which does him honour, declared his adherence to his original admission in its full and obvious extent.

"I did not mean," said he, "merely to acknowledge that the jury have the *power*; for their power nobody ever doubted, and, if a judge was to tell them they had it not, they would only have to laugh at him, and convince him of his error, by finding a general verdict which must be recorded: I meant, therefore, to consider it as a *right*, as an important privilege, and of great value to the constitution."

Thus Mr. Bearcroft and I are perfectly agreed. I never contended for more than he has voluntarily conceded. I have now his express authority for repeating, in my own former words, that the jury have not merely the *power* to acquit, upon a view of the whole charge, without control or punishment, and without the possibility of their acquittal being annulled by any other authority; but that they have a *constitutional legal right to do it; a right fit to be exercised*; and intended by the wise founders of the government, to be a protection to the lives and liberties of Englishmen, against the encroachment and perversions of authority in the hands of fixed magistrates.

But this candid admission on the part of Mr. Bearcroft, though very honourable to himself, is of no importance to me; since, from what has already fallen from your lordship, I am not to expect a ratification of it from the court. It is therefore my duty to establish it. I feel all the importance of my subject, and nothing shall lead me to day to go out of it. I claim all the attention of the court, and the right to state every authority which applies, in my judgment, to the argument, without being supposed to introduce them for other purposes than my duty to my client, and the constitution of my country warrants and approves.

It is not very usual, in an English court of justice, to be driven back to the earliest history and original elements of the constitution, in order to establish the first principles which mark and distinguish the English law. They are always assumed, and, like axi-

oms in science, are made the foundation of reasoning without being proved. Of this sort our ancestors, for many centuries, must have conceived the right of an English jury to decide upon every question which the forms of the law submitted to their final decision; since, though they have immemorially exercised that supreme jurisdiction, we find no trace in any of the ancient books of its ever being brought into question.

It is but as yesterday when compared with the age of the law itself, that judges, unwarranted by any former judgments of their predecessors, without any new commission from the crown, or enlargement of judicial authority from the legislature, have sought to fasten a limitation upon the rights and privileges of jurors, totally unknown in ancient times, and palpably destructive of the very end and object of their institution.

No fact, my lord, is of more easy demonstration; for, the history and laws of a free country lie open even to vulgar inspection.

During the whole Saxon era, and even long after the establishment of the Norman government, the whole administration of justice, criminal and civil, was in the hands of the people themselves, without the control or intervention of any judicial authority, delegated to fixed magistrates by the crown. The tenants of every manor administered civil justice to one another in the court-baron of their lord; and their crimes were judged of in the leet; every suitor of a manor giving his voice as a juror, and the steward being only the register, and not the judge.

On appeals from the domestick jurisdictions to the county court, and to the torn of the sheriff, or in suits and prosecutions originally commenced in either of them; the sheriff's authority extended no further than to summon the jurors, to compel their attendance, ministerially to regulate their proceedings, and to enforce their decisions, and even where he was specially empowered by the king's writ of *justicies* to proceed in causes of superiour value; no *judicial* au-

thority was thereby conferred upon himself, but only a more enlarged jurisdiction ON THE JURORS who were to try the cause mentioned in the writ.

It is true that the sheriff cannot now intermeddle in pleas of the crown, but with this exception, which brings no restrictions on juries, these jurisdictions remain untouched at this day; intricacies of property have introduced other forms of proceeding, but the constitution is the same.

This popular judicature was not confined to particular districts, or to inferiour suits and misdemeanors, but pervaded the whole legal constitution; for, when the Conqueror, to increase the influence of his crown, erected that great superintending court of justice in his own palace, to receive appeals, criminal and civil, from every court in the kingdom, and placed at the head of it the *Capitalis justiciarius totius Angliæ*, of whose original authority the chief justice of this court is but a partial and feeble emanation: even that great magistrate was in the *aula regis* merely ministerial; every one of the king's tenants who owed him service in right of a barony, had a seat and a voice in that high tribunal; and the office of justiciar was but to record and to enforce their judgments.

In the reign of king Edward the first, when this great office was abolished, and the present courts at Westminster established by a distribution of its powers; the barons preserved that supreme superintending jurisdiction which never belonged to the justiciar, but to themselves only as the jurors in the king's court: a jurisdiction which, when nobility from being territorial and foedal became personal and honorary, was assumed and exercised by the peers of England, who, without any delegation of judicial authority from the crown, form to this day the supreme and final court of English law, judging in the last resort for the whole kingdom, and sitting upon the lives of the peerage, in their ancient and genuine character, as the *pares* of one another.

When the courts at Westminster were established in their present forms, and when the civilization and

commerce of the nation had introduced more intricate questions of justice, the judicial authority in civil cases could not but enlarge its bounds; the rules of property in a cultivated state of society became by degrees beyond the compass of the unlettered multitude, and in certain well known restrictions, undoubtedly fell to the judges; yet more perhaps from necessity than by consent, as all judicial proceedings were artfully held in the Norman language, to which the people were strangers.

Of these changes in judicature, immemorial custom, and the acquiescence of the legislature, is the evidence which establishes the jurisdiction of the courts on the true principles of English law, and measures the extent of it by their ancient practice.

But no such evidence is to be found of any the least relinquishment or abridgment of popular judicature in cases of crimes; on the contrary, every page of our history is filled with the struggles of our ancestors for its preservation.

The law of property changes with new objects, and becomes intricate as it extends its dominions; but crimes must ever be of the same easy investigation; they consist wholly in intention, and the more they are multiplied by the policy of those who govern, the more absolutely the publick freedom depends upon the people's preserving the entire administration of criminal justice to themselves.

In a question of property between two private individuals, the crown can have no possible interest in preferring the one to the other: but it may have an interest in crushing both of them together, in defiance of every principle of humanity and justice, if they should put themselves forward in a contention for publick liberty against a government seeking to emancipate itself from the dominion of the laws. No man in the least acquainted with the history of nations, or of his own country, can refuse to acknowledge, that if the administration of criminal justice were left in the hands of the crown, or its deputies, no greater freedom could possibly exist than government might

choose to tolerate from the convenience or policy of the day.

My lord, this important truth is no discovery or assertion of mine, but is to be found in every book of the law; whether we go up to the most ancient authorities, or appeal to the writings of men in our own times, we meet with it alike in the most emphatical language. Mr. Justice Blackstone by no means biased towards democratical government, having, in the third volume of his commentaries, explained the excellence of the trial by jury in civil cases, expresses himself thus: vol. 4. p. 349. "But it holds much stronger in criminal cases; since in times of difficulty and danger, more is to be apprehended from the violence and partiality of judges appointed by the crown, in suits between the king and the subject, than in disputes between one individual and another, to settle the boundaries of private property. Our law has, therefore wisely placed this strong and twofold barrier of a presentment and trial by jury, between the liberties of the people and the prerogative of the crown: without this barrier, justices of *oyer* and *terminer* named by the crown, might, as in France or in Turkey, imprison, despatch, or exile, any man that was obnoxious to government, by an instant declaration that such was their will and pleasure. So that the liberties of England cannot but subsist so long as this palladium remains sacred and inviolate, not only from all open attacks which none will be so hardy as to make, but also from all secret machinations which may sap and undermine it."

But this remark, though it derives new force in being adopted by so great an authority, was no more original in Mr. Justice Blackstone than in me, for the same express reason; for the institution and authority of juries is to be found in Bracton, who wrote above five hundred years before him. "The curia and the pares," says he, "were necessarily the judges in all cases of life, limb, crime and disherison of the heir in capite. The king could not decide, for

then he would have been both prosecutor and judge ; neither could his justices, for they represent him.\*

Notwithstanding all this, the learned judge was pleased to say at the trial, that there was no difference between criminal and civil cases. I say, on the contrary, independent of these authorities that there is not, even to vulgar observation, the remotest similitude between them.

There are four capital distinctions between prosecutions for crimes, and civil actions; every one of which deserves consideration.

First: In the jurisdiction necessary to found the charge.

Secondly ; In the manner of the defendant's pleading to it.

Thirdly ; In the authority of the verdict which discharges him.

Fourthly ; In the independence and security of the jury from all consequences in giving it.

As to the first, it is unnecessary to remind your lordships, that, in a civil case, the party who conceives himself aggrieved, states his complaint to the court, avails himself at his own pleasure of its process, compels an answer from the defendant by its authority, or taking the charge *pro confesso* against him on his default, is entitled to final judgment and execution for his debt, without any interposition of a jury. But in criminal cases it is otherwise; the court has no cognisance of them, without leave from the people, forming a grand inquest. If a man were to commit a capital offence in the face of all the judges of England, their united authority could not put him upon his trial: they could file no complaint against him, even upon the records of the supreme criminal court; but could only commit him for safe custody, which is equally competent to every common justice of the peace: the grand jury alone could arraign him, and in their discretion might likewise finally discharge

\* Vide likewise Mr. Reeve's very ingenious History of the English Law.



him, by throwing out the bill, with the names of all your lordships as witnesses on the back of it.

If it shall be said, that this exclusive power of the grand jury does not extend to lesser misdemeanors, which may be prosecuted by information; I answer, that for that very reason it becomes doubly necessary to preserve the power of the other jury which is left.

But, in the rules of pleading, there is no distinction between capital and lesser offences; and, I venture to assert, that the defendant's plea of not guilty, which universally prevails as the legal answer to every information or indictment, as opposed to special pleas to the court in civil actions; and the necessity imposed upon the crown to join the general issue, is absolutely decisive of the present question.

Every lawyer must admit, that the rules of pleading were originally established to mark and to preserve the distinct jurisdictions of the court and the jury, by a separation of the law from the fact wherever they were intended to be separated. A person charged with owing a debt, or having committed a trespass, &c. &c. if he could not deny the facts on which the actions were founded, was obliged to submit his justification for matter of law by a special plea to the court upon the record; to which plea the plaintiff might demur, and submit the legal merits to the judges. By this arrangement, no power was ever given to the jury, by an issue joined before them, but when a right of decision as comprehensive as the issue went along with it: for, if a defendant in such civil actions pleaded the general issue instead of a special plea, aiming at a general deliverance from the charge, by showing his justification to the jury at the trial; the court protected its own jurisdiction, by refusing all evidence of the facts on which such justification was founded.

The extension of the general issue beyond its ancient limits, and in deviation from its true principle, has introduced some confusion into this simple and

harmonious system ; but the law is substantially the same.

Norman, at this day, in any of those actions where the ancient forms of our jurisprudence are still wisely preserved, can possibly get at the opinion of a jury upon any question not intended by the constitution for their decision. In actions of debt, detinue, breach of covenant, trespass, or replevin, the defendant can only submit the mere fact to the jury ; the law must be pleaded to the court : if dreading the opinion of the judges, he conceals his justification under the cover of a general plea in hopes of a more favourable construction of his defence at the trial ; its very existence can never even come within the knowledge of the jurors : every legal defence must arise out of facts, and the authority of the judge is interposed, to prevent their appearing before a tribunal which, in such cases, has no competent jurisdiction over them.

By imposing this necessity of pleading every legal justification to the court, and by this exclusion of all evidence on the trial beyond the negation of the fact, the courts indisputably intended to establish, and did in fact effectually secure the judicial authority over legal questions from all encroachment or violation ; and it is impossible to find a reason in law, or in common sense, why the same boundaries between the fact and the law should not have been at the same time extended to criminal cases by the same rules of pleading. If the jurisdiction of the jury had been designed to be limited to the fact as in civil actions,

But no such boundary was ever made or attempted ; on the contrary, every person charged with any crime by an indictment or information, has been in all times from the Norman conquest to this hour, not only permitted, but even bound to throw himself upon his country for deliverance, by the general plea of not guilty ; and may submit his whole defence to the jury, whether it be a negation of the fact, or a justification of it in law : and the judge has no authority as in a civil case, to refuse such evidence at the trial, as out of the issue, and as *coram non judice*, an au-

thority which in common sense he certainly would have, if the jury had no higher jurisdiction in the one case than in the other. The general plea thus sanctioned by immemorial custom, so blends the law and the fact together, as to be inseparable but by the voluntary act of the jury in finding a special verdict: the general investigation of the whole charge is therefore before them, and although the defendant admits the fact laid in the information or indictment, he, nevertheless, under his general plea, gives evidence of others which are collateral, referring them to the judgment of the jury, as a legal excuse or justification, and receives from their verdict a complete, general, and conclusive deliverance.

Mr. Justice Blackstone, in the fourth volume of his Commentaries, page 339, says: "The traitorous or felonious intent are the points and very gist of the indictment, and must be answered directly by the general negative, not guilty, and the jury will take notice of any defensive matter, and give their verdict accordingly, as effectually as if it were specially pleaded."

"This, therefore," says Sir Matthew Hale, in his pleas of the crown, page 258, "is, upon all accounts, the most advantageous plea for the defendant: it would be a most unhappy case for the judge himself if the prisoner's fate depended upon his directions; unhappy also for the prisoner; for if the judge's opinion must rule the verdict, the trial by jury would be useless."

My lord, the conclusive operation of the verdict when given, and the security of the jury from all consequences in giving it, renders the contrast between criminal and civil cases striking and complete. No new trial can be granted as in a civil action. Your lordships, however you may disapprove of the acquittal, have no authority to award one; for there is no precedent of any such upon record, and the discretion of the court is circumscribed by the law.

Neither can the jurors be attainted by the crown.

In Bushel's case, Vaughan's reports, page 146, that learned and excellent judge, expressed himself thus : " There is no case in all the law of an attainr for the king, nor any opinion but that of Thyrning's, 10th of Henry IVth, title attainr, 60 and 64, for which there is no warrant in law, though there be other specious authority against it, touched by none that have argued this case."

*Lord Mansfield.* To be sure it is so.

*Mr. Erskine.* Since that is clear, my lord, I shall not trouble the court further upon it ; indeed I have not been able to find any one authority for such an attainr but a dictum in Fitzherbert's *Natura Brevium*, page 107 ; and on the other hand, the doctrine of Bushel's case is expressly agreed to in very modern times, vide lord Raymond's reports, first volume, page 469.

If then your lordships reflect but for a moment upon this comparative view of criminal and civil cases which I have laid before you ; how can it be seriously contended, not merely that there is no difference, but that there is any, the remotest similarity between them ? In the one case, the power of accusation begins from the court ; in the other, from the people only, forming a grand jury. In the one, the defendant must plead a special justification, the merits of which can only be decided by the judges ; in the other, he may throw himself for general deliverance upon his country. In the first, the court may award a new trial, if the verdict for the defendant be contrary to the evidence or the law ; in the last, it is conclusive and unalterable ; and to crown the whole, the king never had that process of attainr which belonged to the meanest of his subjects.

When these things are attentively considered, I might ask those who are still disposed to deny the right of the jury to investigate the whole charge, whether such a solecism can be conceived to exist in any human government, much less in the most refined and exalted in the world, as that a power of supreme judicature should be conferred at random by the

blind forms of the law where no right was intended to pass with it; and which was upon no occasion and under no circumstance to be exercised; which, though exerted notwithstanding in every age, and in a thousand instances, to the confusion and discomfiture of fixed magistracy, should never be checked by authority, but should continue on from century to century, the revered guardian of liberty and of life, arresting the arm of the most headstrong government in the worst of times, without any power in the crown or its judges, to touch without its consent the meanest wretch in the kingdom, or even to ask the reason and principle of the verdict which acquits him. That such a system should prevail in a country like England without either the original institution or the acquiescing sanction of the legislature is impossible. Believe me, my lord, no talents can reconcile, no authority can sanction such an absurdity: the common sense of the world revolts at it.

Having established this important right in the jury beyond all possibility of cavil or controversy, I will now show your lordship that its existence is not merely consistent with theory, but is illustrated and confirmed by the universal practice of all judges; not even excepting Mr. Justice Forster himself, whose writings have been cited in support of the contrary opinion. How a man expresses his abstract ideas is but of little importance when an appeal can be made to his plain directions to others, and to his own particular conduct: but even none of his expressions when properly considered and understood militate against my position.

In this justly celebrated book on the criminal law, page 156, he expresses himself thus: "The construction which the law putteth upon fact STATED AND AGREED OR FOUND by a jury, is in all cases undoubtedly the proper province of the court."

Now if the adversary is disposed to stop here, though the author never intended he should, as is evident from the rest of the sentence, yet I am willing to stop with him, and to take it as a sub-

statute proposition; for the slightest attention must discover that it is not repugnant to any thing which I have said. Facts *stated and agreed*, or facts *found* by a jury which amounts to the same thing, constitute a special verdict; and who ever supposed that the law upon a special verdict was not the province of the court? Who ever denied that where upon a general issue the parties choose to agree upon facts and to state them; or the jury choose voluntarily to find them without drawing the legal conclusion themselves, that in such instances the court is to draw it? That Forster meant nothing more than that the court was to judge of the law when the jury thus voluntarily prays its assistance by special verdict, is evident from his words which follow; for he immediately goes on to say, "in cases of doubt and REAL difficulty, it is therefore commonly recommended to the jury to state facts and circumstances in a special verdict." But neither here, nor in any other part of his works, is it said or insinuated that they are bound to do so, but at their own free discretion: indeed, the very term *recommended*, admits the contrary; and requires no commentary. I am sure I shall never dispute the wisdom or expediency of such a recommendation in those cases of doubt; because the more I am contending for the existence of such an important right, the less it would become me to be the advocate of rashness and precipitation in the exercise of it.

It is no denial of jurisdiction to tell the greatest magistrate upon earth to take good counsel in cases of real doubt and difficulty. Judges upon trials whose authority to state the law is indisputable, often refer it to be more solemnly argued before the court; and this court itself often holds a meeting of the twelve judges before it decides on a point upon its own records, of which the others have confessedly no cognizance till it comes before them by the writ of error of one of the parties. These instances are monuments of wisdom, integrity, and discretion; but they do not bear in the remotest

degree upon jurisdiction: the sphere of jurisdiction is measured by what may or may not be decided by any given tribunal with legal effect, not by the rectitude or error of the decision. If the jury according to these authorities may determine the whole matter by their verdict, and if the verdict when given is not only final and unalterable, but must be enforced by the authority of the judges, and executed if resisted by the whole power of the state; upon what principle of government or reason can it be argued not to be law? that the jury are in this exact predicament is confessed by Forster; for he concludes with saying, "that when the law is clear, the jury under the direction of the court in point of law *may*, and if they are well advised will, *always find a general verdict conformably to such directions.*"

This is likewise consistent with my position: if the law be clear, we may presume that the judge states it clearly to the jury; and, if he does, undoubtedly the jury, if they are well advised, will find according to such directions; for they have not a capricious discretion to make law at their pleasure, but are bound in conscience, as well as judges are, to find it truly; and generally speaking, the learning of the judge who presides at the trial affords them a safe support and direction.

The same practice of judges in stating the law to the jury, as applied to the particular case before them, appears likewise in the case of the king against Onby, 2d lord Raymond, page 1494. On the trial the judge directs the jury thus: "If you believe such and such witnesses who have sworn to such and such facts, *the killing of the deceased appears to be with malice prepense*; but if you do not believe them, then you ought to find him guilty of manslaughter; and the jury may, if they think proper, give a general verdict of murder or manslaughter; *but if they decline giving a general verdict, and will find the facts specially*, the court is then to form their judgment from the facts found, whether the defendant be guilty or

not guilty; that is, whether the act was done with malice and deliberation or not."

Surely language can express nothing more plainly or unequivocally, than that where the general issue is pleaded to an indictment, the law and the fact are both before the jury; and that the former can never be separated from the latter: for the judgment of the court, unless by their own spontaneous act: for the words are, "If they decline giving a general verdict, and will find the facts specially, the court is *THEN* to form their judgment from the facts found." So that after a general issue joined, the authority of the court only commences when the jury chooses to decline the decision of the law by a general verdict; the right of declining which legal determination, is by the by a privilege conferred on them by the statute of Westminster, 2d, and by no means a restriction of their powers.

But another very important view of the subject remains behind; for supposing I had failed in establishing that contrast between criminal and civil cases, which is now too clear not only to require, but even to justify another observation, the argument would lose nothing by the failure; the similarity between criminal and civil cases derives all its application to the argument from the learned judge's supposition, that the jurisdiction of the jury over the law was never contended for in the latter, and consequently on a principle of equality could not be supported in the former; whereas, I do contend for it, and can incontestibly establish it in both. This application of the argument is plain from the words of the charge: "If the jury could find the law, it would undoubtedly hold in civil cases as well as criminal; but was it ever supposed that a jury was competent to say the operation of a fine, or a recovery, or a warranty, which are mere questions of law?"

To this question I answer, that the competency of the jury in such cases is contended for to the full extent of my principle, both by Lyttleton and by Coke: they cannot indeed decide upon them, *de plano*, which,



as Vaughan truly says, is unintelligible, because an unmixed question of law can by no possibility come before them for decision; but whenever, which very often happens, the operation of a fine, a recovery, a warranty, or any other record or conveyance, known to the law of England, comes forward, mixed with the fact on the general issue, the jury have then unquestionably a right to determine it; and what is more, no other authority possibly can; because, when the general issue is permitted by law, these questions cannot appear on the record for the judgment of the court, and although it can grant a new trial, yet the same question must ultimately be determined by another jury. This is not only self evident to every lawyer, but, as I said, is expressly laid down by Littleton in the 368th section. "Also in such case where the inquest may give their verdict at large, if they will take upon them the knowledge of the law upon the matter, they may give their verdict generally as it is put in their charge: as in the case aforesaid they may well say, that the lessor did not disseize the lessee, if they will." Coke, in his commentary on this section, confirms Littleton, saying: "That in doubtful cases they should find specially for fear of an attain; and it is plain that the statute of Westminster the 2d, was made either to give or to confirm the right of the jury to find the matter specially if they would, leaving their jurisdiction over the law as it stood by the common law. The words of the statute of Westminster 2d, chapter 30th, are, "Ordinatum est quod justiciarii ad assizas capiendas assignati, non compellant juratores dicere precise si sit decessina vel non; dummodo dicere voluerint veritatem facti et petere auxilium curie."

From these words it should appear, that the jurisdiction of the jury over the law when it came before them on the general issue, was so vested in them by the constitution, that the exercise of it in all cases had been considered to be compulsory upon them, and that this act was a legislative relief from that compulsion in the case of an assize of disseizin; it is equally

plain from the remaining words of the act, that their jurisdiction remained as before; "sed si sponte velent diciere quod disseisina est vel non, admitatur eorum veredictum sub suo periculo."

But the most material observation upon this statute as applicable to the present subject is, that the terror of the attainr from which it was passed to relieve them, having, as has been shown, no existence in cases of crime, the act only extended to relieve the jury, at their discretion, from finding the law in civil actions; and consequently, it is only from custom, and not from positive law, that they are not *even compellable* to give a general verdict involving a judgment of law on every criminal trial.

These principles and authorities certainly establish that it is the duty of the judge on every trial where the general issue is pleaded, to give to the jury his opinion on the law as applied to the case before them; and that they must find a general verdict comprehending a judgment of law, unless they choose to refer it specially to the court.

But we are here, in a case where it is contended, that the duty of the judge is the direct contrary of this: that he is to give no opinion at all to the jury upon the law as applied to the case before them; that they likewise are to refrain from all consideration of it, and yet that the very same general verdict comprehending both fact and law, is to be given by them, as if the whole legal matter had been summed up by the one and found by the other.

I confess I have no organs to comprehend the principle on which such a practice proceeds. I contended for nothing more at the trial than the very practice recommended by Forster and lord Raymond: I addressed myself to the jury upon the law with all possible respect and deference, and indeed with very marked personal attention to the learned judge: so far from urging the jury dogmatically to think for themselves without his constitutional assistance, I called for his opinion on the question of libel, saying, that if he should tell them distinctly the paper indicted

was libellous, though I should not admit that they were bound at all events to give effect to it if they felt it to be innocent; yet I was ready to agree that they ought not to go against the charge without great consideration: but that if he should shut himself up in silence giving no opinion at all upon the criminality of the paper, from which alone any guilt could be fastened on the publisher, and should narrow their consideration to the publication, I entered my protest against their finding a verdict affixing the epithet of *guilty* to the mere fact of publishing a paper, the guilt of which they had not investigated.

If, after this address to the jury, the learned judge had told them, that in his opinion the paper was a libel, but still leaving it to their judgments, and leaving likewise the defendant's evidence to their consideration, had further told them, that he thought it did not exculpate the publication; and if, in consequence of such directions, the jury had found a verdict for the crown, I should never have made my present motion for a new trial: because I should have considered such a verdict of guilty as founded upon the opinion of the jury on the whole matter as left to their consideration, and must have sought my remedy by arrest of judgment on the record.

But the learned judge took a direct contrary course: he gave no opinion at all on the guilt or innocence of the paper: he took no notice of the defendant's evidence of intention; told the jury, in the most explicit terms, that neither the one nor the other were within their jurisdiction; and upon the mere fact of publication, directed a general verdict comprehending the epithet of guilty, after having expressly withdrawn from the jury every consideration of the merits of the paper published, or the intention of the publisher, from which it is admitted on all hands the guilt of publication could alone have any existence.

My motion is therefore founded upon this obvious and simple principle; that the defendant has had in fact no trial; having been found guilty without any investigation of his guilt, and without any power left to

the jury to take cognizance of his innocence. I undertake to show, that the jury could not possibly conceive or believe from the judge's charge, that they had any jurisdiction, to acquit him, however they might have been impressed even with the merit of the publication, or convinced of his meritorious intention in publishing it: nay, what is worse, while the learned judge totally deprived them of their whole jurisdiction over the question of libel and the defendant's seditious intention, he at the same time directed a general verdict of guilty, which comprehended a judgment upon both.

When I put this construction on the learned judge's direction, I found myself wholly on the language in which it was communicated; and it will be no answer to such construction, that no such restraint was meant to be conveyed by it. If the learned judge's intentions were even the direct contrary of his expressions, yet if in consequence of that which was expressed though not intended, the jury were abridged of a jurisdiction which belonged to them by law, and in the exercise of which the defendant had an interest, he is equally a sufferer, and the verdict given under such misconception of authority is equally void: my application ought therefore to stand or fall by the charge itself, upon which I disclaim all disingenuous cavilling. I am certainly bound to show, that from the general result of it fairly and liberally interpreted, the jury could not conceive that they had any right to extend their consideration beyond the bare fact of publication, so as to acquit the defendant by a judgment founded on the legality of the dialogue, or the honesty of the intention in publishing it.

In order to understand the learned judge's direction, it must be recollected that it was addressed to them in answer to me, who had contended for nothing more than that these two considerations ought to rule the verdict; and it will be seen, that the charge, on the contrary, not only excluded both of them by general inference, but by expressions, arguments, and illustrations the most studiously selected to convey that

exclusion, and to render it binding on the consciences of the jury.

After telling them in the very beginning of his charge, that the single question for their decision was, Whether the defendant had published the pamphlet? he declared to them that it was not even *allowed* to him as the judge trying the cause, to say whether it was or was not a libel: for that if he should say it was, no libel, and they following his direction should acquit the defendant; they would thereby deprive the prosecutor of his writ of error upon the record, which was one of his dearest birthrights. The law, he said, was equal between the prosecutor and the defendant; that a verdict of acquittal would close the matter for ever, depriving him of his appeal; and that whatever, therefore, was upon the record *was not for their decision*, but might be carried at the pleasure of either party to the house of lords.

Surely language could not convey a limitation upon the right of the jury over the question of libel, or the intention of the publisher, more positive or more universal. It was positive, inasmuch as it held out to them that such a jurisdiction could not be entertained without injustice; and it was universal because the principle had no special application to the particular circumstances of that trial; but subjected every defendant upon every prosecution for a libel, to an inevitable conviction on the mere proof of publishing *any thing*, though both judge and jury might be convinced that the thing published was innocent and even meritorious.

My Lord, I make this commentary without the hazard of contradiction from any man whose reason is not disordered. For, if the prosecutor in every case, has a birthright by law to have the question of libel left open upon the record, which it can only be by a verdict of conviction on the single fact of publishing, no legal right can at the same time exist in the jury to shut out that question by a verdict of acquittal founded upon the merits of the publication, or the innocent mind of the publisher.

Rights that are repugnant and contradictory cannot be co-existent. The jury can never have a constitutional right to do an act beneficial to the defendant, which when done, deprives the prosecutor of a right which the same constitution has vested in him. No right can belong to one person, the exercise of which in every instance must necessarily work a wrong to another. If the prosecutor of a libel has in every instance the privilege to try the merits of his prosecution before the judges, the jury can have no right in any instance to preclude his appeal to them by a general verdict for the defendant.

The jury therefore from this part of the charge must necessarily have felt themselves absolutely limited (I might say even in their powers) to the fact of publication; because the highest restraint upon good men is to convince them that they cannot break loose from it without injustice: and the power of a good citizen is never more effectually destroyed than when he is made to believe that the exercise of it will be a breach of his duty to the publick, and a violation of the laws of his country.

But since equal justice between the prosecutor and defendant is the pretence for this abridgement of jurisdiction, let us examine a little how it is affected by it.

Do the prosecutor and the defendant really stand upon an equal footing by this mode of proceeding? with what decency this can be alleged, I leave those to answer who know that is only by the indulgence of Mr. Bearcroft, of counsel for the prosecution, that my reverend client is not at this moment in prison\*, while we are discussing this notable equality.

Besides, my lord, the judgment of this court, though not final in the constitution, and therefore not binding on the prosecutor, is absolutely conclusive on the defendant. If your lordships pronounce the record to

\* Lord Mansfield ordered the Dean to be committed on the motion for the new trial, and said, he had no discretion to suffer him to be at large, without consent, after his appearance in court, on conviction. Upon which, Mr. Bearcroft gave his consent that the Dean should remain at large upon bail.

contain no libel, and arrest the judgment on the verdict, the prosecutor may carry it to the House of Lords: and pending his writ of error remains untouched by your lordship's decision. But, if judgment be against the defendant, it is only at the discretion of the crown (as it is said) and not of right, that he can prosecute any writ of error at all; and even if he finds no obstruction in that quarter, it is but at the best an appeal for the benefit of publick liberty, from which he himself can have no personal benefit; for the writ of error being no supersedeas, the punishment is inflicted on him in the mean time.

In the case of Mr. Horne, this court imprisoned him for publishing a libel upon its own judgment, pending his appeal from its justice; and he had suffered the utmost rigour which the law imposed upon him as a criminal, at the time that the house of lords, with the assistance of the twelve judges of England, were gravely assembled to determine, whether he had been guilty of any crime. I do not mention this case as hard or rigorous on Mr. Horne, as an individual: it is the general course of practice; but surely that practice ought to put an end to this argument of equality between prosecutor and prisoner.

It is adding insult to injury, to tell an innocent man who is in a dungeon pending his writ of error, and of whose innocence, both judge and jury were convinced at the trial; that he is in equal scales with his prosecutor, who is at large, because he has an opportunity of deciding after the expiration of his punishment, that the prosecution had been unfounded, and his sufferings unjust.

By parity of reasoning, a prisoner in a capital case is to be hanged in the mean time for the benefit of equal justice; leaving his executors to fight the battle out with his prosecutor upon the record, through every court in the kingdom: by which at last his attainder must be reversed, and the blood of his posterity remain uncorrupted. What justice can be more impartial or equal!

So much for this right of the prosecutor of a libel to *compel* a jury in every case, generally to convict a defendant on the fact of publication, or to find a special verdict. A right unheard of before since the birth of the constitution; not even founded upon any equality in fact, even if such a shocking parity could exist in law, and not even contended to exist in any other case where private men become the prosecutors of crimes for the ends of publick justice.

It can have, generally speaking, no existence in any prosecution for felony; because the general description of the crime in such indictments, for the most part, shuts out the legal question in the particular instance, from appearing on the record: and for the same reason, it can have no place even in appeals of death, &c. the only cases where prosecutors appear as the avengers of their own private wrongs, and not as the representatives of the crown.

The learned judge proceeded next to establish the same universal limitation upon the power of the jury, from the history of different trials, and the practice of former judges who presided at them. And while I am complaining of what I conceive to be injustice, I must take care not to be unjust myself. I certainly do not, nor ever did consider the learned judge's misdirection in his charge to be peculiar to himself: it was only the resistance of the defendant's evidence, and what passed after the jury returned into court with the verdict, that I ever considered to be a departure from all precedents: the rest had undoubtedly the sanction of several modern cases; and I wish, therefore, to be distinctly understood, that I partly found my motion for a new trial in opposition to these decisions. It is my duty to speak with deference of all the judgments of this court; and I feel an additional respect for some of those I am about to combat, because they are your lordship's: but comparing them with the judgments of your predecessors for ages, which is the highest evidence of English law, I must be forgiven if I presume to question their authority.



My lord, it is necessary that I should take notice of some of them as they occur in the learned judge's charge; for although he is not responsible for the rectitude of those precedents which he only cited in support of it, yet the defendant is unquestionably entitled to a new trial, if their principles are not ratified by the court; for whenever the learned judge cited precedents to warrant the limitation on the province of the jury imposed by his own authority, it was such an adoption of the doctrines they contained, as made them a rule to the jury in their decision.

First then, the learned judge, to overturn my argument with the jury for their jurisdiction over the whole charge, opposed your lordship's established practice for eight and twenty years: and the weight of this great authority was increased by the general manner in which it was stated; for I find no expressions of your lordship's in any of the reported cases which go the length contended for. I find the practice, indeed, fully warranted by them; but I do not meet with the principle which can alone vindicate that practice, fairly and distinctly avowed. The learned judge, therefore, referred to the charge of chief justice Raymond, in the case of the king and Franklin, in which the universal limitation contended for, is indeed laid down, not only in the most unequivocal expressions, but the ancient jurisdiction of juries, resting upon all the authorities I have cited, treated as a ridiculous notion which had been just taken up a little before the year 1731; and which no man living had ever dreamt of before. The learned judge observed, that lord Raymond stated to the jury on Franklin's trial, that there were three questions: the first was, the fact of publishing the *Craftsman*; secondly, whether the averments in the information were true: but that the third, viz. whether it was a libel, was merely a question of law with which the jury *had nothing to do*, as had been then of late thought by some people who ought to have known better.

This direction of lord Raymond's was fully ratified and adopted in all its extent, and given to the jury, on the present trial, with several others of the same import, as an unerring guide for their conduct; and surely human ingenuity could not frame a more abstract and universal limitation upon their right to acquit the defendant by a general verdict; for lord Raymond's expressions amount to an absolute denial of the right of the jury, to find the defendant not guilty, if the publication and inuendoes are proved. "Libel or no libel, is a question of law with which you, the jury, *have nothing to do.*" How then can they have any right to give a general verdict consistently with this declaration? can any man in his senses collect that he has a right to decide on that with which he has nothing to do?

But it is needless to comment on these expressions, for the jury were likewise told by the learned judge himself, that if they believed the fact of publication, they were *bound* to find the defendant guilty; and it will hardly be contended, that a man has a right to refrain from doing that which he is bound to do.

Mr. Cowper, as counsel for the prosecution, took upon him to explain what was meant by this expression; and I seek for no other construction: "The learned judge (said he) did not mean to deny the right of the jury, but only to convey, that there was a religious and moral obligation upon them to refrain from the exercise of it."

Now, if the principle which imposed that obligation had been alleged to be special, applying only to the particular case of the Dean of St. Asaph, and consequently consistent with the right of the jury, to a more enlarged jurisdiction in other instances, telling the jury that they were bound to convict on proof of publication, might be plausibly construed into a recommendation to refrain from the exercise of their right in that case, and not to a general denial of its existence; but the moment it is recollected, that the principle which bound them was not particular to

the instance; but abstract, and universal, binding alike in every prosecution for a libel, it requires no logick to pronounce the expression to be an absolute, unequivocal, and universal denial of the right. Common sense tells every man, that to speak of a person's right to do a thing which yet in every possible instance where it might be exerted, he is religiously and morally bound not to exert, is not even sophistry, but downright vulgar nonsense.

But, my lord, the jury were not only limited by these modern precedents, which certainly have an existence; but were in my mind limited with still greater effect by the learned judge's declaration, that some of those ancient authorities on which I had principally relied for the establishment of their jurisdiction, had not merely been over-ruled, but were altogether inapplicable, I particularly observed how much ground I lost with the jury, when they were told from the bench, that even in *Bushel's case*, on which I had so greatly depended, the very reverse of my doctrine had been expressly established; the court having said unanimously in that case, according to the learned judge's state of it, that if the jury be asked what the law is, they cannot say, and having likewise ratified in express terms the maxim, *Ad questionem legis non respondent juratores*.

My lord, this declaration from the bench, which I confess not a little staggered and surprised me, rendered it my duty to look again into *Vaughan*, where *Bushel's case* is reported; I have performed that duty and now take upon me positively to say, that the words of Lord Chief Justice *Vaughan*, which the learned judge considered as a judgment of the court, denying the jurisdiction of the jury over the law, *where a general issue is joined before them*, were on the contrary made use of by that learned and excellent person, to expose the fallacy of such a misapplication of the maxim alluded to, by the counsel against *Bushel*; declaring that it had no reference to any case where the law and the fact were incorporated by the

plea of not guilty, and confirming the right of the jury to find the law upon every such issue, in terms the most emphatical and expressive. This is manifest from the whole report.

Bushel, one of the jurors on the trial of Penn and Mead, had been committed by the court for finding the defendant not guilty, against the direction of the court in matter of law; and being brought before the court of common pleas by habeas corpus, this cause of commitment appeared upon the face of the return to the writ. It was contended by the counsel against Bushel upon the authority of this maxim, that the commitment was legal, since it appeared by the return, that Bushel had taken upon him to find the law against the direction of the judge, and had been therefore legally imprisoned for that contempt. It was upon that occasion that Chief Justice Vaughan, with the concurrence of the whole court, repeated the maxim, *Ad questionem legis non respondent juratores*, as cited by the counsel for the crown, but denied the application of it to impose any restraint upon jurors trying any crime upon the general issue. His language is too remarkable to be forgotten, and too plain to be misunderstood. Taking the words of the return to the habeas corpus, viz. "That the jury did acquit against the direction of the court in matter of law." "These words (said this great lawyer) taken literally and *de plano* are insignificant and unintelligible; for no issue can be joined of matter of law; no jury can be charged with the trial of matter of law barely; no evidence ever was, or can be given to a jury of what is law or not; nor any oath given to a jury to try matter of law alone, nor can any attaint lie for such a false oath. Therefore we must take off this veil and colour of words, which make a show of being something, but are in fact nothing: for if the meaning of these words, *Finding against the direction of the court in matter of law*, be, that if the judge, having heard the evidence given in court (for he knows no other) shall tell the jury upon this evidence, that the law is for the plaintiff or the defendant, and they un-

der the pain of fine and imprisonment are to find accordingly, every one sees that the jury is but a troublesome delay, great charge, and of no use in determining right and wrong; which were a strange and new found conclusion, after a trial so celebrated for many hundreds of years in this country."

Lord Chief Justice Vaughan's argument is therefore plainly this. Adverting to the arguments of the counsel, he says, you talk of the maxim *Ad questionem legis non respondent juratores*, but it has no sort of application to your subject. The words of your return, viz. That Bushel did acquit against the direction of the court in matter of law, is unintelligible, and as applied to the case, impossible. The jury could not be asked in the abstract, what was the law? they could not have an issue of the law joined before them: they could not be sworn to try it. *Ad questionem legis non respondent juratores*: therefore to say literally and *de plano* that the jury found the law against the judge's direction is absurd: they could not be in a situation to find it; an unmixed question of law could not be before them: the judge could not give any positive directions of law upon the trial, for the law can only arise out of facts, and the judge cannot know what the facts are till the jury have given their verdict. Therefore, continued the chief justice, let us take off this veil and colour of words which make a show of being something but are in fact nothing: let us get rid of the fallacy of applying a maxim, which truly describes the jurisdiction of the courts over issues of law; to destroy the jurisdiction of jurors, in cases where law and fact are blended together upon a trial. For if the jury at the trial are bound to receive the law from the judge, every one sees that it is a mere mockery, and of no use in determining right and wrong.

This is the plain common sense of the argument; and it is impossible to suggest a distinction between its application to Bushel's case and to the present; except that the right of imprisoning the jurors was there contended for, in order to enforce obedience to the directions of the judge. But this distinction, if it de-

serves the name, though held up by Mr. Bearcroft as very important, is a distinction without a difference. For if according to Vaughan the free agency of the jury over the whole charge, uncontrolled by the judge's direction, constitutes the whole of that ancient mode of trial, it signifies nothing by what means that free agency is destroyed: whether by the imprisonment of conscience or of body; by the operation of their virtues or of their fears: whether they decline exerting their jurisdiction from being told that the exertion of it is a contempt of religious and moral order, or a contempt of the court punishable by imprisonment; their jurisdiction is equally taken away.

My Lord, I should be very sorry improperly to waste the time of the court; but I cannot help repeating once again, that if in consequence of the learned judge's directions, the jury from a just deference to learning and authority; from a nice and modest sense of duty, felt themselves not at liberty to deliver the defendant from the whole indictment; he has not been tried. Because though he was entitled by law to plead generally that he was not guilty; though he did in fact plead accordingly and went down to trial upon it, yet the jury have not been permitted to try that issue; but have been directed to find at all events a general verdict of guilty; with a positive injunction not to investigate the guilt, or even to listen to any evidence of innocence.

My lord, I cannot help contrasting this trial, with that of Colonel Gordon's but a few sessions past, in London. I had in my hand but this moment, an accurate note of Mr. Baron Eyre's charge to the jury on that occasion; I will not detain the court by looking for it amongst my papers because I believe I can correctly repeat the substance of it.

Earl of *Mansfield*. The case of the King against Cosmo Gordon.

Mr. *Erskine*. Yes, my lord: Colonel Gordon was indicted for the murder of General Thomas, whom he had killed in a duel: and the question was, whether

if the jury were satisfied of that fact, the prisoner was to be convicted of murder?

That was according to Forster, as much a question of law, as libel or no libel: but Mr. Baron Eyre did not therefore feel himself at liberty to withdraw it from the jury. After stating (greatly to his honour) the hard condition of the prisoner, who was brought to a trial for life, in a case where the positive law and the prevailing manners of the times were so strongly in opposition to one another, that he was afraid the punishment of individuals would never be able to beat down an offence so sanctioned; he addressed the jury nearly in these words: "Nevertheless, gentlemen, I am bound to declare to you, what the law is as applied to this case, in all the different views in which it can be considered by you upon the evidence. *Of this law and of the facts as you shall find them, your verdict must be compounded,* and I persuade myself that it will be such a one as to give satisfaction to your own consciences."

Now, if Mr. Baron Eyre, instead of telling the jury that a duel, however fairly and honourably fought, was a murder by the law of England, and leaving them to find a general verdict under that direction, had said to them, that whether such a duel was murder or manslaughter, was a question with which neither he nor they had any thing to do, and on which he should therefore deliver no opinion, and had directed them to find that the prisoner was guilty of killing the deceased in a deliberate duel, telling them, that the court would settle the rest; that would have been directly consonant to the case of the Dean of St. Asaph. By this direction, the prisoner would have been in the hands of the court, and the judges, not the jury, would have decided upon the life of Colonel Gordon.

But the two learned judges differ most essentially indeed.

Mr. Baron Eyre conceives himself bound in duty to state the law as applied to the particular facts, and to leave it to the jury.

Mr. Justice Buller says, he is not bound nor even allowed so to state or apply it, and withdraws it entirely from their consideration.

Mr. Baron Eyre tells the jury that their verdict is to be compounded of the fact and the law.

Mr. Justice Buller on the contrary, that it is to be confined to the fact only, the law being the exclusive province of the court.

My lord, it is not for me to settle differences of opinion between the judges of England, nor to pronounce which of them is wrong: but since they are contradictory and inconsistent, I may hazard the assertion that they cannot both be right: the authorities which I have cited, and the general sense of mankind which settles every thing else, must determine the rest.

My lord, I come now to a very important part of the case, untouched I believe before in any of the arguments on this occasion.

I mean to contend, that the learned judge's charge to the jury cannot be supported even upon its own principles; for, supposing the court to be of opinion that all I have said in opposition to these principles is inconclusive, and that the question of libel, and the intention of the publisher were properly withdrawn from the consideration of the jury, still I think I can make it appear that such a judgment would only render the misdirection more palpable and striking.

I may safely assume, that the learned judge must have meant to direct the jury either to find a general or a special verdict; or to speak more generally, that one of those two verdicts must be the object of every charge: for I venture to affirm, that neither the records of the courts, the reports of their proceedings, nor the writings of lawyers, furnish any account of a third. There can be no middle verdict between both; the jury must either try the whole issue generally, or find the facts specially, referring the legal conclusion to the court.



I may affirm with equal certainty, that the general verdict, *ex vi termini*, is universally as comprehensive as the issue, and that consequently such a verdict on an indictment, upon the general issue, not guilty, universally and unavoidably involves a judgment of law, as well as fact; because the charge comprehends both, and the verdict, as has been said, is co-extensive with it. Both Coke and Littleton, give this precise definition of a general verdict; for they both say, that if the jury will find the law, they may do it by a general verdict, which is ever as large as the issue. If this be so, it follows by necessary consequence, that if the judge means to direct the jury to find generally against a defendant, he must leave to their consideration every thing which goes to the constitution of such a general verdict, and is therefore bound to permit them to come to, and to direct them how to form that general conclusion from the law and the fact, which is involved in the term guilty. For it is ridiculous to say, that guilty is a fact, it is a conclusion in law from a fact, and therefore can have no place in a special verdict, where the legal conclusion is left to the court.

In this case the defendant is charged, not with having published this pamphlet, but with having published a certain false, scandalous, and seditious libel, with a seditious and rebellious intention. He pleads that he is not guilty in manner and form as he is accused: which plea is admitted on all hands to be a denial of the whole charge, and consequently does not merely put in issue, the fact of publishing the pamphlet, but the truth of the whole indictment, that is, the publication of the libel set forth in it with the intention charged by it.

When this issue comes down for trial, the jury must either find the whole charge or a part of it; and admitting for argument sake, that the judge has a right to dictate either of these two courses, he is undoubtedly bound in law to make his direction to the jury conformable to the one or the other. If he means to confine the jury to the fact of publishing, considering

the guilt of the defendant to be a legal conclusion for the court to draw from that fact, specially found on the record : he ought to direct the jury to find that fact without affixing the epithet of guilty to the finding. But if he will have a general verdict of guilty, which involves a judgment of law as well as fact, he must leave the law to the consideration of the jury. For when the word guilty is pronounced by them, it is so well understood to comprehend every thing charged by the indictment, that the associate or his clerk instantly records, that the defendant is guilty in manner and form as he is accused ; that is, not simply that he has published the pamphlet contained in the indictment ; but that he is guilty of publishing *the libel* with the wicked intentions charged on him by the record.

Now, if this effect of a general verdict of guilty is reflected on for a moment, the misdirection of directing one upon the bare fact of publishing, will appear in the most glaring colours. The learned judge says to the jury : Whether this be a libel is not for your consideration ; I can give no opinion on that subject without injustice to the prosecutor ; and as to what Mr. Jones swore concerning the defendant's motives for the publication, that is likewise not before you : for, if you are satisfied in point of fact that the defendant published this pamphlet, you are bound to find him *guilty*. Why guilty, my lord, when the consideration of guilt is withdrawn ? He confines the jury to the finding of a fact, and enjoins them to leave the legal conclusion from it to the court ; yet, instead of directing them to make that fact the subject of a special verdict, he desires them in the same breath to find a general one ; to draw the conclusion without any attention to the premises : to pronounce a verdict which upon the face of the record includes a judgment upon their oaths that the paper is a libel, and that the publisher's intentions in publishing it were wicked and seditious, although neither the one nor the other made any part of their consideration.

My lord, such a verdict is a monster in law, without precedent in former times, or root in the constitution. If it be true, on the principle of the charge itself, that the fact of publication was all that the jury were to find, and all that was necessary to establish the defendant's guilt, if the thing published be a libel; why was not that fact found like all other facts upon special verdicts? Why was an epithet, which is a legal conclusion from the fact, extorted from a jury who were restrained from forming it themselves? The verdict must be taken to be general or special: if general, it has found the whole issue without a co-extensive examination. If special, the word guilty, which is a conclusion from facts, can have no place in it.

Either this word guilty is operative or unessential; an epithet of substance, or of form. It is impossible to controvert that proposition, and I give the gentlemen their choice of the alternative. If they admit it to be operative and of real substance, or, to speak more plainly, that the fact of publication found specially, without the epithet of guilty, would have been an imperfect verdict inconclusive of the defendant's guilt, and on which no judgment could have followed; then it is impossible to deny that the defendant has suffered injustice, because such an admission confesses that a criminal conclusion from a fact has been obtained from the jury, without permitting them to exercise that judgment which might have led them to a conclusion of innocence: and that the word guilty has been obtained from them at the trial as a mere matter of form, although the verdict without it, stating only the fact of publication which they were directed to find, to which they thought the finding alone related, and beyond which they never enlarged their inquiry, would have been an absolute verdict of acquittal.

If, on the other hand, to avoid this inseparable objection to the charge, the word guilty is to be reduced to a mere word of form, and it is to be contended that the fact of publication found specially would have

been tantamount; be it so; let the verdict be so recorded; let the word guilty be expunged from it, and I instantly sit down; I trouble your lordships no further; I withdraw my motion for a new trial, and will maintain in arrest of judgment, that the Dean is not convicted. But if this is not conceded to me, and the word guilty though argued to be but form, and though as such obtained from the jury, is still preserved upon the record, and made use of against the defendant as substance; it will then become us (independent of all consideration as lawyers) to consider a little how that argument is to be made consistent with the honour of gentlemen, or that fairness of dealing, which cannot but have place wherever justice is administered.

But in order to establish that the word guilty is a word of essential substance; that the verdict would have been imperfect without it; and that therefore the defendant suffers by its insertion: I undertake to show your lordship, upon every principle and authority of law, that if the fact of publication, which was all that was left to the jury, had been found by special verdict, no judgment could have been given on it.

My lord, I will try this by taking the fullest finding which the facts in evidence could possibly have warranted. Supposing then, for instance, that the jury had found that the defendant published the paper according to the tenour of the indictment: that it was written of and concerning the king and his government; and that the inuendos were likewise as averred, K meaning the present king, and P the present parliament of Great Britain: on such a finding, no judgment could have been given by the court, even if the record had contained a complete charge of a libel. No principle is more unquestionable than that to warrant any judgment upon a special verdict, the court which can presume nothing that is not visible on the record, must see sufficient matter upon the face of it, which, if taken to be true, is conclusive of the defendant's guilt. They must be able

to say, If this record be true, the defendant ~~cannot~~ be innocent of the crime which it charges on him. But from the facts of such a verdict the court could arrive at no such legitimate conclusion; for it is admitted on all hands, and indeed expressly laid down by your lordship in the case of the King against Woodfall, that publication even of a libel is not ~~con-~~clusive evidence of guilt; for that the defendant may give evidence of an innocent publication.

Looking, therefore, upon a record containing a good indictment of a libel, and a verdict finding that the defendant published it; but without the epithet of guilty, the court could not pronounce that he published it with the malicious intention which is the essence of the crime: they could not say what might have passed at the trial: for any thing that appeared to them he might have given such evidence of innocent motive, necessity, or mistake, as might have amounted to excuse or justification. They would say that the facts stated upon the verdict would have been fully sufficient in the absence of a legal defence to have warranted the judge to have given a general verdict of guilty, comprehending the intention which constitutes the crime: but that to warrant the bench which is ignorant of every thing at the trial, to presume that intention, and thereupon to pronounce judgment on the record, the jury must not merely find full evidence of the crime, but such facts as compose its legal definition. This wise principle is supported by authorities which are perfectly familiar.

If, in an action of trover, the plaintiff proves property in himself, possession in the defendant, and a demand and refusal of the thing charged to be converted; this evidence unanswered is full proof of a conversion; and if the defendant could not show to the jury why he had refused to deliver the plaintiff's property on a legal demand of it, the judge would direct them to find him guilty of the conversion. But on the same facts found by special verdict, no judgment could be given by the court; the judges

would say, if the special verdict contains the whole of the evidence given at the trial, the jury should have found the defendant guilty; for the conversion was fully proved, but we cannot declare these facts to amount to a conversion, for the defendant's intention was a fact which the jury should have found from the evidence, over which we have no jurisdiction.

So in the case put by lord Coke, I believe in his first institute 115. If a modus is found to have existed beyond memory till within thirty years before the trial, the court cannot upon such facts found by special verdict pronounce against the modus: but any one of your lordships would certainly tell the jury, that upon such evidence they were warranted in finding against it.

In all cases of prescription, the universal practice of judges is to direct juries by analogy to the statute of limitations to decide against incorporeal rights, which for many years have been relinquished; but such modern relinquishments, if stated upon the record by special verdict, would in no instance warrant a judgment against any prescription. The principle of the difference is obvious and universal: the court looking at a record can presume nothing. It has nothing to do with reasonable probabilities, but is to establish legal certainties by its judgments. Every crime is, like every other complex idea capable of a legal definition: if all the component parts which go to its formation are put as facts upon the record, the court can pronounce the perpetrator of them a criminal: but if any of them are wanting, it is a chasm in fact, and cannot be supplied. Wherever intention goes to the essence of the charge, it must be found by the jury; it must be either comprehended under the word guilty in the general verdict, or specifically found as a fact by the special verdict. This was solemnly decided by the court in Huggins's case, in second lord Raymond, 1581, which was a special verdict of murder from the Old Bailey.

It was an indictment against John Huggins, and James Barnes, for the murder of Edward Arne. The

indictment charged that Barnes made an assault upon Edward Arne, being in the custody of the other prisoner Huggins, and detained him for six weeks in a room newly built over the common sewer of the prison, where he languished and died: the indictment further charged, that Barnes and Huggins well knew that the room was unwholesome and dangerous: the indictment then charged that the prisoner Huggins of his malice aforethought was present, aiding and abetting Barnes, to commit the murder aforesaid. This was the substance of the indictment.

The special verdict found that Huggins was warden of the Fleet by letters patent: that the other prisoner Barnes was servant to Gibbons Huggins, deputy in the care of all the prisoners, and of the deceased, a prisoner there. That the prisoner Barnes, on the 7th of September, put the deceased Arne in a room over the common sewer, which had been newly built, knowing it to be newly built, and damp, and situated as laid in the indictment: *and that fifteen days before the prisoner's death, HUGGINS likewise well knew that the room was new built, damp, and situated as laid. They found that fifteen days before the death of the prisoner, Huggins was present in the room, and saw him there under duress of imprisonment, but then and there turned away, and Barnes locked the door, and that from that time till his death the deceased remained locked up.*

It was argued before the twelve judges in Serjeants Inn, whether Huggins was guilty of murder. It was agreed that he was not answerable *criminally*, for the act of his deputy, and could not be guilty, unless the criminal intention was brought personally home to himself. And it is remarkable how strongly the judges required the fact of knowledge and malice, to be stated on the face of the verdict, as opposed to *evidence* of intention, and inference from a fact.

The court said, it is chiefly relied on that Huggins was present in the room, and saw Arne, *sub duritie imprisonmenti, et se avertit*; but he might be present and not know all the circumstances; the words are VI-

DIT *sub duritie*; but he might see him under duress, and not know he was under duress: it was answered that seeing him under duress evidently means he knew he was under duress: but says the court, "*we cannot take things by inference in this manner; his seeing is not evidence of his knowledge of these things, and therefore the jury, if the fact would have born it, should have found that Huggins knew he was there without his consent, which not being done, we cannot intend these things nor infer them; we must judge of facts, and not from the evidence of facts*"; and cited Keylnge, 78; that whether a man be aiding and abetting a murder is matter of fact, and ought to be expressly found by a jury.

The application of these last principles and authorities to the case before the court is obvious and simple.

The criminal intention is a fact, and must be found by the jury: and that finding can only be expressed upon the record by the general verdict of guilty which comprehends it, or by the special enumeration of such facts as do not merely amount to evidence of, but which completely and conclusively constitute the crime. But it has been shown, and is indeed admitted, that the publication of a libel is only *prima facie* evidence of the complex charge in the indictment, and not such as amounts in itself when specially stated to conclusive guilt; since as the judges cannot tell how the criminal inference from the fact of publishing a libel, might have been rebutted at the trial, no judgment can follow from a special finding, that the defendant published the paper indicted according to the tenour laid in the indictment.

It follows from this, that if the jury had only found the fact of publication, which was all that was left to them, *without affixing the epithet of guilty*, which could be only legally affixed by an investigation not permitted to them; a *venire facias de novo* must have been awarded because of the uncertainty of the verdict as to the criminal intention: whereas it will now be argued that if the court shall hold the dialogue to



be a libel, the defendant is fully convicted; because the verdict does not merely find that he published, which is a finding consisting with innocence, but finds him GUILTY of publishing, which is a finding of the criminal publication charged by the indictment.

My lord, how I shall be able to defend my innocent client against such an argument, I am not prepared to say. I feel all the weight of it; but that feeling surely entitles me to greater attention, when I complain of that which subjects him to it, without the warrant of the law. It is the weight of such an argument that entitles me to a new trial; for the Dean of St. Asaph is not only found guilty, without any investigation of his guilt by the jury, but without that question being even open to your lordships on the record. Upon the record the court can only say the dialogue is, or is not a libel; but if it should pronounce it to be one, the criminal intention of the defendant in publishing it is taken for granted by the word guilty; although it has not only not been tried, but evidently appears from the verdict itself, not to have been found by the jury. Their verdict is, "guilty of publishing, but whether a libel or not they do not find." And it is therefore impossible to say that they can have found a criminal motive in publishing a paper, on the criminality of which they have formed no judgment. Printing and publishing that which is legal, contains in it no crime; the guilt must arise from the publication of a libel; and there is therefore a palpable repugnancy on the face of the verdict itself, which first finds the Dean guilty of publishing, and then renders the finding a nullity, by pronouncing ignorance in the jury whether the thing published comprehends any guilt.

To conclude this part of the subject, the epithet of guilty (as I set out with at first) must either be taken to be substance, or form. If it be substance, and as such, conclusive of the *criminal* intention of the publisher, should the thing published be hereafter adjudged to be a libel; I ask a new trial, because the defendant's guilt in that respect has been found with.

out being tried. If on the other hand, the word **GUILTY** is admitted to be but a word of form, then let it be expunged, and I am not hurt by the verdict.

Having now established, according to my two first propositions, that the jury upon every general issue, joined in a criminal case, have a constitutional jurisdiction over the whole charge, I am next in support of my third, to contend, that the case of a libel forms no legal exception to the general principles which govern the trial of all other crimes, that the argument for the difference, viz. because the whole charge always appears on the record, is false in fact, and that even if true, it would form no substantial difference in law.

As to the first, I still maintain that the whole case does by no means necessarily appear on the record. The crown may indict part of the publication, which may bear a criminal construction when separated from the context, and the context omitted having no place in the indictment, the defendant can neither demur to it, nor arrest the judgment after a verdict of guilty; because the court is absolutely circumscribed by what appears on the record, and the record contains a legal charge of a libel.

I maintain likewise, that according to the principles adopted upon this trial, he is equally shut out from such defence before the jury: for though he may read the explanatory context in evidence, yet he can derive no advantage from reading it, if they are tied down to find him guilty of publishing the matter which is contained in the indictment, however its innocence may be established by a view of the whole work. The only operation which looking at the context can have upon a jury is, to convince them that the matter upon the record, however libellous when taken by itself, was not intended to convey the meaning which the words indicted import in language, when separated from the general scope of the writing: but upon the principle contended for, they could not acquit the defendant upon any such opinion, for that would be to take upon them the prohibited question

of libel, which is said to be matter of law for the court.

My learned friend Mr. Bearcroft, appealed to his audience with an air of triumph, whether any sober man could believe, that an English jury, in the case I put from Algernon Sidney, would convict a defendant of publishing the Bible; should the crown indict a member of a verse which was blasphemous in itself if separated from the context. My lord, if my friend had attended to me, he would have found that in considering such supposition as an absurdity, he was only repeating my own words. I never supposed that a jury would act so wickedly, or so absurdly, in a case where the principle contended for by my friend Mr. Bearcroft, carried so palpable a face of injustice, as in the instance which I selected to expose it; and which I therefore selected to show that there were cases in which the supporters of the doctrine were ashamed of it, and obliged to deny its operation: for it is impossible to deny that if the jury can look at the context in the case put by Sidney, and acquit the defendant on the merits of the thing published, they may do it in cases which will directly operate against the principle he seems to support. This will appear from other instances, where the injustice is equal, but not equally striking.

Suppose the crown were to select some passage from Locke upon government, as for instance, "that there was no difference *between the king and the consable when either of them exceeded their authority.*" That assertion under certain circumstances, if taken by itself without the context, might be highly seditious, and the question therefore would be *quo animo* it was written: perhaps the real meaning of the sentence might not be discoverable by the immediate context without a view of the whole chapter, perhaps of the whole book: therefore to do justice to the defendant, upon the very principle by which Mr. Bearcroft in answering Sidney's case can alone acquit the publisher of his bible, the jury must look into the whole essay on government, and form a judgment of

the design of the author, and the meaning of his work.

*Lord Mansfield.* To be sure they may judge from the whole work.

*Mr. Erskine.* And what is this, my lord, but determining the question of libel which is denied to day? for if a jury may acquit the publisher of any part of Mr. Locke on government, from a judgment arising out of a view of the whole book, though there be no inuendos to be filled up as facts in the indictment what is it that bound the jury to convict the Dean of St. Asaph, as the publisher of Sir William Jones's dialogue, on the bare fact of publication, without the right of saying that his observations as well as Mr. Locke's were speculative, abstract, and legal?

*Lord Mansfield.* They certainly may in all cases go into the whole context.

*Mr. Erskine.* And why may they go into the context? Clearly, my lord, to enable them to form a correct judgment of the meaning of the part indicted, even though no particular meaning be submitted to them by averments in the indictment, and therefore the very permission to look at the context for such a purpose (where there are no inuendos to be filled up by them as facts) is a palpable admission of all I am contending for; viz. the right of the jury to judge of the merits of the paper, and the intention of its author.

But it is said that though a jury have a right to decide that a paper, criminal as far as it appears on the record, is nevertheless legal when explained by the whole work of which it is a part; yet that they shall have no right to say that the whole work itself, if it happens to be all indicted, is innocent and legal. This proposition, my lord, upon the bare stating of it, seems too preposterous to be seriously entertained; yet there is no alternative between maintaining it in its full extent, and abandoning the whole argument.

If the defendant is indicted for publishing part of the verse in the psalms, "There is no God," it is as-

asserted that the jury may look at the context, and saying that the whole verse did not maintain that blasphemous proposition, but only that the fool had said so in his heart, may acquit the defendant upon a judgment that it is no libel, to impute such imagination to a fool: but if the whole verse had been indicted, viz. "the fool has said in his heart there is no God:" the jury on the principle contended for, would be restrained from the same judgment of its legality, but must convict of blasphemy on the fact of publishing, leaving the question of libel untouched on the record.

If in the same manner, only part of this very dialogue had been indicted instead of the whole, it is said even by your lordship, that the jury might have read the context, and then, notwithstanding the fact of publishing, might have collected from the whole, its abstract and speculative nature, and have acquitted the defendant upon that judgment of it; and yet it is contended that they have no right to form the same judgment of it upon the present occasion, although the whole be before them upon the face of the indictment; but are bound to convict the defendant upon the fact of publishing, notwithstanding they should have come to the same judgment of its legality which it is admitted they might have come to on trying an indictment for the publication of a part. Really, my lord, the absurdities and gross departures from reason, which must be hazarded to support this doctrine are endless.

The criminality of the paper is said to be a question of law, yet the meaning of it, from which alone the legal interpretation can arise, is admitted to be a question of fact. If the text be so perplexed and dubious as to require inuendos to explain, to point, and to apply obscure expression or construction, the jury alone as judges of fact, are to interpret and to say what sentiments the author must have meant to convey by his writing; yet if the writing be so plain and intelligible as to require no averments of its meaning, it then becomes so obscure and mysterious as to

be a question of law, and beyond the reach of the very same men who but a moment before were interpreters for the judges ; and though its object be most obviously peaceable and its author innocent, they are bound to say upon their oaths, that it is wicked and seditious, and the publisher of it guilty.

As a question of fact the jury are to try the real sense and construction of the words indicted, by comparing them with the context ; and yet if that context itself which affords the comparison makes part of the indictment, the whole becomes a question of law ; and they are then bound to convict the defendant on the fact of publishing it, without any jurisdiction over the meaning. To complete the juggle, the intention of the publisher may likewise be shown as a fact, by the evidence of any extrinsick circumstances, such as the context to explain the writing, or the circumstances of mistake or ignorance under which it was published, and yet in the same breath, the intention is pronounced to be an inference of law from the act of publication, which the jury cannot exclude, but which must depend upon the future judgment of the court.

But the danger of this system, is no less obvious than its absurdity. I do not believe that its authors ever thought of inflicting death upon Englishmen, without the interposition of a jury ; yet its establishment would unquestionably extend to annihilate the substance of that trial in every prosecution for high treason, where the publication of any writing was laid as the overt act. I illustrated this by a case when I moved for a rule, and called upon my friends for an answer to it, but no notice has been taken of it by any of them. This was just what I expected. When a convincing answer cannot be found to an objection, those who understand controversy never give strength to it by a weak one.

I said, and I again repeat, that if an indictment charges that a defendant did traitorously intend, compass, and imagine the death of the king ; and in order to carry such treason into execution, published a pa-

per which it sets out literatim on the face of the record, the principle which is laid down to day would subject that person to the pains of death by the single authority of the judges, without leaving any thing to the jury, but the bare fact of publishing the paper. For, if that fact were proved, and the defendant called no witnesses, the judge who tried him would be warranted, nay bound in duty by the principle in question, to say to the jury: Gentlemen, the overt act of treason charged upon the defendant, is the publication of this paper, intending to compass the death of the king; the fact is proved, and you are therefore bound to convict him. The treasonable intention is an inference of law from the act of publishing; and if the thing published does not upon a future examination intrinsically support that inference, the court will arrest the judgment, and your verdict will not affect the prisoner.

My lord, I will rest my whole argument upon the analogy between these two cases, and give up every objection to the doctrine when applied to the one, if upon the strictest examination it shall not be found to apply equally to the other.

If the seditious intention be an inference of law, from the fact of publishing the paper which this indictment charges to be a libel, is not the treasonable intention equally an inference from the fact of publishing that paper, which the other indictment charges to be an overt act of treason? In the one case as in the other, the writing or publication of a paper is the whole charge; and the substance of the paper so written or published makes all the difference between the two offences. If that substance be matter of law where it is a seditious libel, it must be matter of law where it is an act of treason: and if because it is law the jury are excluded from judging it in the one instance, their judgment must suffer an equal abridgment in the other.

The consequence is obvious. If the jury by an appeal to their consciences are to be thus limited in the free exercise of that right which was given them by

the constitution, to be a protection against judicial authority where the weight and majesty of the crown is put into the scale against an obscure individual, the freedom of the press is at an end: for how can it be said that the press is free because every thing may be published without a previous licence, if the publisher of the most meritorious work which the united powers of genius and patriotism ever gave to the world, may be prosecuted by information of the king's attorney general, without the consent of the grand jury, may be convicted by the petty jury, on the mere fact of publishing (who indeed without perjuring themselves must on this system inevitably convict him) and must then depend upon judges who may be the supporters of the very administration whose measures are questioned by the defendant, and who must therefore either give judgment against him or against themselves.

To all this Mr. Bearcroft shortly answers: Are you not in the hands of the same judges, with respect to your property and even to your life, when special verdicts are found in murder, felony, and treason? in these cases do prisoners run any hazard from the application of the law by the judges, to the facts found by the juries? Where can you possibly be safer?

My lord, this is an argument which I can answer without indelicacy or offence, because your lordship's mind is much too liberal to suppose, that I insult the court by general observations on the principles of our legal government. However safe we might be, or might think ourselves, the constitution never intended to invest judges with a discretion, which cannot be tried and measured by the plain and palpable standard of law; and in all the cases put by Mr. Bearcroft, no such loose discretion is exercised as must be entertained by a judgment on a seditious libel; and therefore the cases are not parallel.

On a special verdict for murder, the life of the prisoner does not depend upon the religious, moral,



or philosophical ideas of the judges, concerning the nature of homicide: no, precedents are searched for, and if he is condemned at all, he is judged exactly by the same rule as others have been judged by before his conduct is brought to a precise, clear, intelligible standard, and cautiously measured by it: it is the law, therefore, and not the judge which condemns him. It is the same in all indictments, or civil actions for slander upon individuals.

Reputation is a personal right of the subject: indeed the most valuable of any, and it is therefore secured by law, and all injuries to it clearly ascertained. Whatever slander hurts a man in his trade, subjects him to danger of life, liberty, or loss of property, or tends to render him infamous, is the subject of an action, and in some instances of an indictment. But in all these cases where the *malus animus* is found by the jury, the judges are in like manner a safe repository of the legal consequence: because such libels may be brought to a well known standard of strict and positive law; they leave no discretion in the judges. The determination of what words when written or spoken of another are actionable, or the subject of an indictment, leaves no more latitude to a court sitting in judgment on the record, than a question of title does in a special verdict in ejectment.

But I beseech your lordship, to consider by what rule the legality of this dialogue is to be decided by the court as a question of law upon the record. Mr. Bearcroft has admitted in the most unequivocal terms (what indeed it was impossible for him to deny) that every part of it when viewed in the abstract was legal; but he says, there is a great distinction to be taken between speculation and exhortation, and that it is this latter which makes it a libel. I readily accede to the truth of the observation; but how your lordship is to determine that difference as a question of law, is past my comprehension: for if the dialogue in its phrase and composition be general, and its libellous tendency arises from the purpose of the writer, to raise discontent by a seditious application of legal doctrines, that

purpose is surely a question of fact if ever there was one, and must therefore be distinctly averred in the indictment, to give the cognizance of it as a fact to the jury, without which no libel can possibly appear upon the record; this is well known to be the only office of the inuendo; because the judges can presume nothing which the strictest rules of grammar do not warrant them to collect intrinsically from the writing itself.

Circumscribed by the record, your lordship can form no judgment of the tendency of this dialogue to excite sedition by any thing but the mere words. You must look at it as if it was an old manuscript dug out of the ruins of Herculaneum; you can collect nothing from the time when, or the circumstances under which it was published; the person by whom, and those amongst whom it was circulated: yet these may render a paper at one time, and under some circumstances, dangerously wicked and seditious, which at another time, and under different circumstances, might be innocent and even highly meritorious.

If puzzled by a task so inconsistent with the real sense and spirit of judicature, your lordships should spurn the fetters of the record, and judging with the reason rather than with the infirmities of men, should take into your consideration, the state of men's minds on the subject of equal representation at this moment, and the great disposition of the present times to revolution in government: if reading the record with these impressions, your lordships should be led to a judgment not warranted by an abstract consideration of the record; then, besides that such a judgment would be founded on facts not in evidence before the court, and not within its jurisdiction if they were; let me further remind your lordships, that even if these objections to the premises were removed, the conclusion would be no conclusion of law: your decision on the subject might be very sagacious as politicians, as moralists, as philosophers, or as licensers of the press; but they would have no resemblance to the judgments of an English court of justice; because it could have no

warrant from the acts of your predecessors, nor afford any precedent to your successors.

But all these objections are perfectly removed, when the seditious tendency of a paper is considered as a question of fact : we are then relieved from the absurdity of a legal discussion separated from all the facts from which alone the law can arise : for the jury can do what (as I observed before) your lordships cannot do in judging by the record ; they can examine by evidence all those circumstances that lead to establish the seditious tendency of the paper from which the court is shut out ; they may know themselves, or it may be proved before them, that it has excited sedition already ; they may collect from witnesses that it has been widely circulated, and seditiously understood ; or, if the prosecution (as is wisest) precedes these consequences, and the reasoning must be a *priori*, surely gentlemen living in the country are much better judges than your lordship, what has or has not a tendency to disturb the neighbourhood in which they live, and that very neighbourhood is the forum of criminal trial.

If they know that the subject of the paper is the topick that agitates the country around them ; if they see danger in that agitation, and have reason to think that the publisher must have intended it ; they say he is guilty. If, on the other hand, they consider the paper to be legal, and enlightening in principle ; likely to promote a spirit of activity and liberty in times when the activity of such a spirit is essential to the publick safety, and have reason to believe it to be written and published in that spirit ; they say, as they ought to do, that the writer or the publisher is not guilty. Whereas your lordship's judgment upon the language of the record must ever be in the pure abstract ; operating blindly and indiscriminately upon all times, circumstances, and intentions, making no distinction between the glorious attempts of a Sidney or a Russel, struggling against the terrours of despotism under the Stuarts ; and those desperate adventurers of the year forty-five, who libelled the person,

and excited rebellion against the mild and gracious government of our late excellent sovereign King George the second.

My lord, if the independent gentlemen of England are thus better qualified to decide from cause of knowledge, it is no offence to the court to say, that they are full as likely to decide with impartial justice as judges appointed by the crown. Your lordships have but a life interest in the publick property, but they have an inheritance in it for their children. Their landed property depends upon the security of the government; and no man who wantonly attacks it can hope or expect to escape from the selfish lenity of a jury. On the first principles of human action they must lean heavily against him. It is only when the pride of Englishmen is picqued by such doctrines as I am opposing to day, that they think it better to screen the guilty by an indiscriminate opposition to them, than surrender those rights by which alone innocence in the day of danger can be protected.

I venture therefore to say, in support of one of my original propositions, that where a writing indicted as a libel, neither contains, nor is averred by the indictment to contain, any slander of an individual, so as to fall within those rules of law which protect personal reputation, but whose criminality is charged to consist (as in the present instance) in its tendency to stir up general discontent, that the trial of such an indictment neither involves, nor can, in its obvious nature, involve any abstract question of law for the judgment of a court; but must wholly depend upon the judgment of the jury on the tendency of the writing itself, to produce such consequences, when connected with all circumstances which attended its publication.

It is unnecessary to push this part of the argument further, because I have heard nothing from the bar against the position which it maintains. None of the gentlemen have, to my recollection, given the court any one single reason, good or bad, why the *tendency* of a paper to stir up discontent against government, separated from all the circumstances which are ever

shut out from the record, ought to be considered as an abstract question of law. They have not told us where we are to find any matter in the books to enable us to argue such questions before the court; or where your lordships yourselves are to find a rule for your judgments on such subjects. I confess that to me it looks more like legislation, or arbitrary power, than English judicature. If the court can say this is a criminal writing, *not* because we know that mischief was intended by its author, or is even contained in itself, but because fools believing the one and the other may do mischief in their folly. The suppression of such writings under particular circumstances may be wise policy in a state; but upon what principle it can be criminal law in England, to be settled in the abstract by judges, I confess with humility, that I have no organs to understand.

Mr. Leycester felt the difficulty of maintaining such a proposition by any argument of law, and therefore had recourse to an argument of fact. "If (says my learned friend) what is or is not a seditious libel, be not a question of law for the court, but of fact for the jury, upon what principle do defendants found guilty of such libels by a general verdict, defeat the judgment for error on the record? and what is still more in point, upon what principle does Mr. Erskine himself, if he fails in his present motion, mean to ask your lordships to arrest this very judgment by saying that the dialogue is not a libel?"

My lord, the observation is very ingenious, and God knows the argument requires that it should; but it is nothing more. The arrest of judgment which follows after a verdict of guilty for publishing a writing, which on inspection of the record exhibits to the court no specifick offence against the law, is no impeachment of my doctrine. I never denied such a jurisdiction to the court. My position is, that no man shall be punished for the criminal breach of any law, until a jury of his equals have pronounced him guilty in mind as well as in act. *Actus non facit reum nisi mens sit rea.*

But I never asserted that a jury had the power to make criminal law as well as to administer it; and therefore it is clear that they cannot deliver over a man to punishment if it appears by the record of his accusation, which is the office of judicature to examine, that he has not offended against any positive law; because however criminal he may have been in his disposition, which is a fact established by the verdict, yet statute and precedents can alone decide what is by law an *indictable* offence.

If, for instance, a man were charged by an indictment with having held a discourse in words highly seditious, and were found guilty by the jury, it is evident that it is the province of the court to arrest that judgment; because though the jury have found that he spoke the words as laid in the indictment, with the seditious intention charged upon him, which they, and they only, could find; yet as the words are not punishable by indictment, as when committed to writing, the court could not pronounce judgment; the declaration of the jury that the defendant was guilty in manner and form as accused, could evidently never warrant a judgment, if the accusation itself contained no charge of an offence against the law.

In the same manner, if a butcher were indicted for privately putting a sheep to causeless and unnecessary torture in the exercise of his trade, but not in publick view so as to be productive of evil example, and the jury could find him guilty, I am afraid that no judgment could follow: because though done *malo animo*, yet neither statute nor precedent has perhaps determined it to be an indictable offence; it would be difficult to draw the line. An indictment would not lie for every inhuman neglect of the sufferings of the smallest innocent animals which Providence has subjected to us:

Yet the poor beetle which we tread upon,  
In corporal suffering feels a pang as great,  
As when a giant dies.

A thousand other instances might be brought of

acts base and immoral, and prejudicial in their consequences, which are not yet indictable by law.

In the case of the King against Brewer, in Cowper's reports, it was held that *knowingly* exposing to sale and selling gold under sterling for standard gold, is not indictable; because the act refers to goldsmiths only, and private cheating is not a common law offence.

Here too the declaration of the jury that the defendant is guilty in manner and form as accused, does not change the nature of the accusation. The verdict does not go beyond the charge; and if the charge be invalid in law, the verdict must be invalid also.

All these cases, therefore, and many similar ones which might be put, are clearly consistent with my principle. I do not seek to erect jurors into legislators or judges. There must be a rule of action in every society which it is the duty of the legislature to create, and of judicature to expound when created. I only support their right to determine guilt or innocence where the crime charged is blended by the general issue with the intention of the criminal; more especially when the quality of the act itself even independent of that intention, is not measurable by any precise principle or precedent of law, but is inseparably connected with the time when, the place where, and the circumstances under which the defendant acted.

My lord, in considering libels of this nature as opposed to slander on individuals to be mere questions of fact, or at all events to contain matter fit for the determination of the jury, I am supported not only by the general practice of courts, but even of those very practisers themselves, who in prosecuting for the crown have maintained the contrary doctrine.

Your lordships will, I am persuaded, admit that the general practice of the profession, more especially of the very heads of it, prosecuting too for the publick, is strong evidence of the law. Attorney generals have seldom entertained such a jealousy of the king's judges in state prosecutions, as to lead them to make presents of jurisdiction to juries, which did not

belong to them of right by the constitution of the country. Neither can it be supposed, that men in high office and of great experience, should in every instance (though differing from each other in temper, character, and talents) uniformly fall into the same absurdity of declaiming to juries upon topics totally irrelevant, when no such inconsistency is found to disfigure the professional conduct of the same men in other cases. Yet I may appeal to ~~your~~ lordship's recollection, without having recourse to the state trials, whether upon every prosecution for a seditious libel within living memory, the attorney general has not uniformly stated such writings at length to the jury, pointed out their seditious tendency which rendered them criminal, and exerted all his powers to convince them of their illegality, as the very point on which their verdict for the crown was to be founded.

On the trial of Mr. Horne, for publishing an advertisement in favour of the widows of those American subjects who had been ~~murdered~~ by the king's troops at Lexington; did the present chancellor, then attorney general, content himself with saying that he had proved the publication, and that the criminal quality of the paper which raised the legal inference of guilt against the defendant, was matter for the court? No, my lord, he went at great length into its dangerous and pernicious tendency, and applied himself with skill and ability to the understandings and the consciences of the jurors. This instance is in itself decisive of his opinion. That great magistrate could not have acted thus upon the principle contended for to day. He never was an idle declaimer. Close and masculine argument is the characteristick of his understanding.

The character and talents of the late lord chief justice De Grey, no less entitles me to infer his opinion from his uniform conduct.

In all such prosecutions while he was in office, he held the same language to juries, and particularly in the case of the King against Woodfall (*to use the expression of a celebrated writer on the occasion*) he tor-



tured his faculties for more than two hours, to convince them that Junius's letter was a libel.

The opinions of another crown lawyer, who has since passed through the highest offices of the law, and filled them with the highest reputation, I am not driven to collect alone from his language as an attorney general; because he carried them with him to the seat of justice. Yet one case is too remarkable to be omitted.

Lord Camden prosecuting doctor Shebbeare, told the jury that he did not desire their verdict upon any other principle, than their solemn conviction of the truth of the information, which charged the defendant with a wicked design to alienate the hearts of the subjects of this country from their king upon the throne.

To complete the account, my learned friend Mr. Bearcroft (though last not least in favour) upon this very occasion, spoke above an hour to the jury at Shrewsbury, to convince them of the libellous tendency of the dialogue, which soon afterwards the learned judge desired them wholly to dismiss from their consideration, as matter with which they had no concern. The real fact is, that the doctrine is too absurd to be acted upon; too distorted in principle, to admit of consistency in practice. It is contraband in law, and can only be smuggled by those who introduce it. It requires great talents and great address to hide its deformity. In vulgar hands it becomes contemptible.

Having supported the rights of juries, by the uniform practice of crown lawyers, let us now examine the question of authority, and see how this court itself and its judges have acted upon trials for libels in former times; for according to lord Raymond in Franklin's case (as cited by Mr. Justice Buller, at Shrewsbury) the principle I am supporting had, it seems, been only broached about the year 1731 by some men of party spirit, and then too for the very first time.

My lord, such an observation in the mouth of lord Raymond, proves how dangerous it is to take up as doctrine every thing flung out at *nisi prius*; above all upon subjects which engage the passions and interests of government. Because the most solemn and important trials with which history makes us acquainted; discussed too at the bar of this court; and when filled with judges the most devoted to the crown, gives the most decisive contradiction to such an unfounded and unguarded assertion.

In the famous case of the seven bishops, the question of libel or no libel was held unanimously by the court of king's bench trying the cause at the bar, to be matter for the consideration and determination of the jury; and the bishops' petition to the king, which was the subject of the information, was accordingly delivered to them, when they withdrew to consider of their verdict.

Thinking this case decisive, I cited it at the trial; and the answer it received from Mr. Bearcroft was, that it had no relation to the point in dispute between us, for that the bishops were acquitted not upon the question of libel, but because the delivery of the petition to the king was held to be no publication.

I was not a little surprised at this state of it, but my turn of speaking was then past; fortunately to day it is my privilege to speak last, and I have now lying before me the fifth volume of the state trials, where the case of the bishops is printed, and where it appears that the publication was expressly proved; that nothing turned upon it in the judgment of the court; and that the charge turned wholly upon the question of libel, which was expressly left to the jury by every one of the judges. Lord chief justice Wright, in summing up the evidence, told them, that a question had at first arisen about the publication, it being insisted on that the delivery of the petition to the king had not been proved; that the court was of the same opinion, and that he was just going to have directed them to find the bishops not guilty, when in came my lord president (such sort of witnesses were no doubt

always at hand when wanted) who proved the delivery to his majesty. Therefore, continued the chief justice, if you believe it was the same petition, it is a publication sufficient, and we must therefore come to inquire whether it be a libel.

He then gave his reasons for thinking it within the case *de libellis famosis*, and concluded by saying to the jury: "In short, I must give you my opinion. I do take it to be a libel. If my brothers have any thing to say to it, I suppose they will deliver their opinion." What opinion? not that the jury had no jurisdiction to judge of the matter, but an opinion for the express purpose of enabling them to give that judgment which the law required at their hands.

Mr. Justice Holloway then followed the chief justice, and so pointedly was the question of libel or no libel, and not the publication, the only matter which remained in doubt, and which the jury with the assistance of the court were to decide upon, that when the learned judge went into the facts which had been in evidence, the chief justice said to him: "Look you by the way, brother, I did not ask you to sum up the evidence, but only to deliver your opinion to the jury, whether it be a libel or no." The chief justice's remark, though it proves my position, was however very unnecessary; for but a moment before, Mr. Justice Holloway had declared he did not think it was a libel, but addressing himself to the jury had said: "*it is left to you, gentlemen.*"

Mr. Justice Powell who likewise gave his opinion that it was no libel, said to the jury: "*But the matter of it is before you, and I leave the issue of it to God and your own consciences.*" And so little was it in the idea of any one of the court, that the jury ought to found their verdict solely upon the evidence of the publication, without attending to the criminality or innocence of the petition, that the chief justice himself consented, on their withdrawing from the bar, that they should carry with them all the materials for coming to a judgment as comprehensive as the charge; and indeed expressly directed that the infor-

mation, the libel, the declarations under the great seal, and even the statute book, should be delivered to them.

The happy issue of this memorable trial, in the acquittal of the bishops by the jury, exercising jurisdiction over the whole charge, freely admitted to them as legal even by king James's judges, is admitted by two of the gentlemen to have prepared and forwarded the glorious era of the revolution. Mr. Bower, in particular, spoke with singular enthusiasm concerning this verdict, choosing (for reasons sufficiently obvious) to ascribe it to a special miracle wrought for the safety of the nation, rather than to the right lodged in the jury to save it by its laws and constitution.

My learned friend finding his argument like nothing upon the earth, was obliged to ascend into heaven to support it. Having admitted that the jury not only acted like just men towards the bishops, but as patriot citizens towards their country, and not being able without the surrender of his whole argument, to allow either their publick spirit, or their private justice to have been consonant to the laws, he is driven to make them the instruments of divine Providence to bring good out of evil, and holds them up as men inspired by God to perjure themselves in the administration of justice, in order by the by to defeat the effects of that wretched system of judicature which he is defending to day, as the constitution of England. For if the king's judges could have decided the petition to be a libel, the Stuarts might yet have been on the throne.

My lord, this is the argument of a priest, not of a lawyer; and even if faith and not law were to govern the question, I should be as far from subscribing to it as a religious opinion.

No man believes more firmly than I do, that God governs the whole universe by the gracious dispensations of his providence, and that all the nations of the earth rise and fall at his command: but then this wonderful system is carried on by the natural

(though to us the often hidden) relation between effects and causes, which wisdom adjusted from the beginning, and which foreknowledge at the same time rendered sufficient, without disturbing either the laws of nature or of civil society.

The prosperity and greatness of empires ever depended, and ever must depend upon the use their inhabitants make of their reason in devising wise laws, and the spirit and virtue with which they watch over their just execution; and it is impious to suppose, that men who have made no provision for their own happiness or security in their attention to their government, are to be saved by the interposition of Heaven in turning the hearts of their tyrants to protect them.

But if every case in which judges have left the question of libel to juries in opposition to law, is to be considered as a miracle, England may vie with Palestine; and Lord Chief Justice Holt steps next into view as an apostle: for that great judge, in Tutchin's case, left the question of libel to the jury in the most unambiguous terms. After summing up the evidence of of writing and publishing, he said to them as follows:

"You have now heard the evidence, and you are to consider whether Mr. Tutchin be guilty. They say they are innocent papers, and no libels; and they say nothing is a libel but what reflects upon some particular person. But this is a very strange doctrine, to say, it is not a libel reflecting on the government, endeavouring to possess the people that the government is misadministered by corrupt persons, that are employed in such or such stations either in the navy or army.

"To say that corrupt officers are appointed to administer affairs, is certainly a reflection on the government. If people should not be called to account for possessing the people with an ill opinion of the government, no government can subsist. For it is very necessary for all governments that the people should have a good opinion of it: and nothing can be worse

to any government, than to endeavour to procure animosities, as to the management of it. This has been always looked upon as a crime, and no government can be safe without it be punished."

Having made these observations, did the chief justice tell the jury that whether the publication in question fell within that principle so as to be a libel on government, was a matter of law for the court, with which they had no concern?—Quite the contrary. He considered the seditious tendency of the paper as a question for their sole determination, saying to them:

"Now you are to consider, whether these words I have read to you, do not tend to beget an ill opinion of the administration of the government? To tell us, that those that are employed know nothing of the matter, and those that do know are not employed. Men are not adapted to offices, but offices to men, out of a particular regard to their interest, and not to their fitness for the places; this is the purport of these papers."

In citing the words of judges in judicature I have a right to suppose their discourse to be pertinent and relevant; and that when they state the defendant's answer to the charge, and make remarks on it, they mean that the jury should exercise a judgment under their direction. This is the practice we must certainly impute to lord Holt, if we do him the justice to suppose that he meant to convey the sentiments which he expressed. So that when we come to sum up this case, I do not find myself so far behind the learned gentleman even in point of express authority; putting all reason, and the analogies of law which unite to support me, wholly out of the question.

There is court of king's bench against court of king's bench; chief justice Wright against chief justice Lee; and lord Holt against lord Raymond. As to living authorities it would be invidious to class them, but it is a point on which I am satisfied myself, and on which the world will be satisfied likewise if ever it comes to be a question.

But even if I should be mistaken in that particular, I cannot consent implicitly to receive any doctrine as the law of England, though pronounced to be such by magistrates the most respectable, if I find it to be in direct violation of the very first principles of English judicature. The great jurisdictions of the country are unalterable but by parliament, and until they are changed by that authority, they ought to remain sacred. The judges have no power over them. What parliamentary abridgment has been made upon the rights of juries since the trial of the bishops, or since Tutchin's case, when they were fully recognised by this court? None. Lord Raymond and lord chief justice Lee ought therefore to have looked there to their predecessors for the law, instead of setting up a new one for their successors.

But supposing the court should deny the legality of all these propositions, or admitting their legality, should resist the conclusions I have drawn from them, then I have recourse to my last proposition, in which I am supported even by all those authorities on which the learned judge relies for the doctrines contained in his charge, to wit :

“ That in all cases where the mischievous intention (which is agreed to be the essence of the crime) cannot be collected by simple inference from the fact charged, because the defendant goes into evidence to rebut such inference, the intention becomes then a pure unmixed question of fact, for the consideration of the jury.”

I said the authorities of the king against Woodfall and Almon were with me. In the first, which is reported in 5th Burrow, your lordship expressed yourself thus. “ Where an act, in itself indifferent, becomes criminal, when done with a particular intent, there the intent must be proved and found. But where the act is itself unlawful (as in the case of a libel) the PROOF of justification or excuse, lies on the defendant; and in failure thereof, the law implies a criminal intent.” Most luminously expressed to convey this sentiment, viz. that when a man publishes a

libel, and has nothing to say for himself, no explanation or exculpation, a criminal intention need not be proved. I freely admit that it need not. It is an inference of common sense, not of law. But the publication of a libel does not exclusively show criminal intent, but is only an implication of law, in failure of the defendant's proof. Your lordship immediately afterwards in the same case explained this further. "There may be cases, where the publication may be justified or excused as lawful or innocent; FOR NO FACT WHICH IS NOT CRIMINAL *though the paper* BE A LIBEL, can amount to SUCH a publication of which a defendant ought to be found guilty." But no question of that kind arose at the trial (i. e. on the trial of Woodfall.) Why? Your lordship immediately explained why. "*Because the defendant called no witnesses,*" expressly saying, that the publication of a libel is not in itself a crime, unless the intent be criminal. And that it is not merely in mitigation of punishment, but that *such* a publication does not warrant a verdict of guilty.

In the case of the King against Almon, a magazine containing one of Junius's letters, was sold at Almon's shop; there was proof of that sale at the trial. Mr. Almon called no witnesses, and was found guilty. To found a motion for a new trial, an affidavit was offered from Mr. Almon, that he was not privy to the sale, nor knew his name inserted as a publisher; and that this practice of booksellers being inserted as publishers by their correspondents without notice, was common in the trade.

Your lordship said: "Sale of a book in a bookseller's shop, is *prima facie* evidence of publication by the master, and the publication of a libel is *prima facie* evidence of criminal intent. It stands good till answered by the defendant. It must stand till contradicted or explained; and if not contradicted, explained, or exculpated, BECOMES tantamount to confession when the defendant calls no witnesses."

Mr. Justice Aston said, "*Prima facie* evidence not answered is sufficient to ground a verdict upon.



If the defendant had a sufficient excuse, he might have proved it at the trial: his having neglected it where there was no surprise, is no ground for a new one." Mr. Justice Willes, and Mr. Justice Ashurst agreed upon those express principles.

These cases declare the law beyond all controversy to be, that publication even of a libel, is no conclusive proof of guilt, but only *prima facie* evidence of it till answered; and that if the defendant can show that his intention was not criminal, he completely rebuts the inference arising from the publication: because though it remains true that he published, yet, according to your lordship's express words, it is not such a publication of which a defendant ought to be found guilty. Apply Mr. Justice Buller's summing up, to this law, and it does not require even a legal apprehension to distinguish the repugnancy.

The advertisement was proved to convince the jury of the Dean's motive for publishing. Mr Jones's testimony went strongly to it, and the evidence to character, though not sufficient in itself, was admissible to be thrown into the scale. But not only no part of this was left to the jury, but the whole of it was expressly removed from their consideration, although in the cases of Woodfall and Almon, it was as expressly laid down to be within their cognizance, and a complete answer to the charge if satisfactory to the minds of the jurors.

In support of the learned judge's charge, there can be therefore but the two arguments, which I stated on moving for the rule: either that the defendant's evidence, namely the advertisement; Mr. Jones's evidence in confirmation of its being *bona fide*; and the evidence to character, to strengthen that construction, were not sufficient proof that the Dean believed the publication meritorious, and published it in vindication of his honest intentions; or else, that even admitting it to establish that fact, it did not amount to such an exculpation as to be evidence of not guilty, so as to warrant a verdict. I still give the learned judge the choice of the alternative.

As to the first, viz. whether it showed honest intention in point of fact, that was a question for the jury. If the learned judge had thought it was not sufficient evidence to warrant the jury's believing that the Dean's motives were such as he had declared them, I conceive he should have given his opinion of it as a point of evidence, and left it there. I cannot condescend to go further. It would be to argue a self evident proposition.

As to the second, viz. that even if the jury had believed from the evidence, that the Dean's intention was wholly innocent, it would not have warranted them in acquitting, and therefore should not have been left to them upon not guilty; that argument can never be supported. For, if the jury had declared, "We find that the Dean published this pamphlet, whether a libel or not we do not find; and we find further, that believing it in his conscience to be meritorious and innocent, he, *bona fide*, published it with the prefixed advertisement, as a vindication of his character from the seditious intentions, and not to excite sedition," it is impossible to say, without ridicule, that on such a special verdict the court could have pronounced a criminal judgment.

Then why was the consideration of that evidence, by which those facts might have been found, withdrawn from the jury, after they brought in a verdict of guilty of publishing ONLY, which in the King against Woodfall, was only said not to negative the criminal intention, because the defendant called no witnesses? Why did the learned judge confine his inquiries to the inuendos, and finding them agreed in, direct the epithet of guilty, without asking the jury if they believed the defendant's evidence to rebut the criminal inference? Some of them positively meant to negative the criminal inference, by adding the word only, and all would have done it, if they had thought themselves at liberty to enter upon that evidence. But they were told expressly that they had nothing to do with

the consideration of that evidence, which, if believed, would have warranted that verdict. The conclusion is evident; if they had a right to consider it, and their consideration might have produced such a verdict; and if such a verdict would have been an acquittal, it must be a misdirection.

"But," says Mr. Bower, "if this advertisement prefixed to the publication, by which the Dean professed his innocent intention in publishing it, should have been left to the jury as evidence of that intention, to found an acquittal on, even taking the dialogue to be a libel, no man could ever be convicted of publishing any thing however dangerous: for he would only have to tack an advertisement to it by way of preface, professing the excellence of its principles and the sincerity of his motives, and his defence would be complete."

My lord, I never contended for any such position. If a man of education, like the Dean, were to publish a writing so palpably libellous, that no ignorance or misapprehension imputable to such a person could prevent his discovering the mischievous design of the author, no jury would believe such an advertisement to be *bona fide*, and would therefore be bound in conscience to reject it, as if it had no existence. The effect of such evidence must be to convince the jury of the defendant's purity of mind, and must therefore depend upon the nature of the writing itself, and all the circumstances attending its publication.

If upon reading the paper and considering the whole of the evidence, they have reason to think that the defendant did not believe it to be illegal, and did not publish it with the seditious purpose charged by the indictment, he is not guilty upon any principle or authority of law, and would have been acquitted even in the star-chamber: for it was held by that court in Lambe's case, in the eighth year of King James the first, as reported by Lord Coke who then presided in it, that every one who should be convicted of a libel, must be the writer or contriver, or a *malicious* publisher *knowing* it to be a libel.

This case of Lambie being of too high authority to be opposed, and too much in point to be passed over, Mr. Bower endeavours to avoid its force by giving it a new construction of his own. He says, that not knowing a writing to be a libel, in the sense of that case, means, not knowing the contents of the thing published; as by conveying papers sealed up, or having a sermon and a libel, and delivering one by mistake for the other. In such cases he says, *ignorantia facti excusat*, because the mind does not go with the act; *sed ignorantia legis non excusat*: and therefore if the party knows the contents of the paper which he publishes, his mind goes with the act of publication though he does not find out any thing criminal, and he is bound to abide by the legal consequences.

This is to make criminality depend upon the consciousness of an act, and not upon the knowledge of its quality, which would involve lunatics and children in all the penalties of criminal law: for whatever they do is attended with consciousness, though their understanding does not reach to the consciousness of offence.

The publication of a libel, not believing it to be one after having read it, is a much more favourable case than publishing it unread by mistake. The one nine times in ten, is a culpable negligence which is no excuse at all: for a man cannot throw papers about the world without reading them, and afterwards say he did not know their contents were criminal; but if a man reads a paper, and not believing it to contain any thing seditious, having collected nothing of that tendency himself, publishes it among his neighbours as an innocent and useful work, he cannot be convicted as a criminal publisher. How he is to convince the jury that his purpose was innocent, though the thing published be a libel, must depend upon circumstances; and these circumstances he may on the authority of all the cases ancient and modern, lay before the jury in evidence; because if he can establish the innocence of his mind, he negatives the very gist of the indictment.

"In all crimes," says lord Hale in his plea of the crown, "the intention is the principal consideration. It is the mind that makes the taking of another's goods to be felony, or a bare trespass only. It is impossible to prescribe all the circumstances evidencing a felonious intent, or the contrary; but the same must be left to the attentive consideration of judge and jury: wherein the best rule is in *dubis*, rather to incline to acquittal than conviction.

In the same work he says, "By the statute of Philip and Mary, touching importation of coin, counterfeit of foreign money, it must, to make it treason, be the intent to utter and make payment of the same; and the intent in this case may be tried and found by circumstances of FACT, by words, letters, and a thousand evidences besides the bare doing of the fact."

This principle is illustrated by frequent practice, where the intention is found by the jury as a fact in a special verdict.

It occurred not above a year ago, at East Grinstead, on an indictment for burglary, before Mr. Justice Ashurst, where I was myself counsel for the prisoner. It was clear upon the evidence that he had broken into the house by force in the night; but I contended that it appeared from proof, that he had broken and entered with an intent to rescue his goods, which had been seized that day by the officers of excise; which rescue though a capital felony by modern statute, was but a trespass, temp. Henry viii. and consequently not a burglary.

Mr. Justice Ashurst saved this point of law, which the twelve judges afterwards determined for the prisoner; but in order to create the point of law, it was necessary that the prisoner's intention should be ascertained as a fact; and for this purpose, the learned judge directed the jury to tell him with what intention they found that the prisoner broke and entered the house, which they did by answering: "To rescue his goods," which verdict was recorded,

In the same manner in the case of the king against Pierce, at the Old Baily, the intention was found by the jury as a fact in the special verdict. The prisoner having hired a horse and afterwards sold him, was indicted for felony; but the judges doubting whether it was more than a fraud, unless he originally hired him intending to sell him, recommended it to the jury to find a special verdict, comprehending their judgment of his intention, from the evidence. Here the quality of the act depended on the intention, which intention it was held to be the exclusive province of the jury to determine, before the judges could give the act any legal denomination.

My lord, I am ashamed to have cited so many authorities to establish the first elements of the law, but it has been my fate to find them disputed. The whole mistake arises from confounding criminal with civil cases. If a printer's servant, without his master's consent or privity, inserts a slanderous article against me in his newspaper, I ought not in justice to indict him; and if I do, the jury *on such proof* should acquit him: but it is no defence to an action, for he is responsible to me *civiliter* for the damage which I have sustained from the newspaper, which is his property. Is there any thing new in this principle? so far from it that every student knows it as applicable to all other cases: but people are resolved from some fatality or other, to distort every every principle of law into nonsense, when they come to apply them to printing; as if none of the rules and maxims which regulate all the transactions of society had any reference to it.

If a man rising in his sleep, walks into a china shop, and breaks every thing about him, his being asleep is a complete answer to an indictment for a trespass, but he must answer in an action for every thing he has broken.

If the proprietor of the York coach, though asleep in his bed at that city, has a drunken servant on the box in London, who drives over my leg and breaks it, he is responsible to me in damages for the accident;

but I cannot indict him as the criminal author of my misfortune. What distinction can be more obvious and simple.

Let us only then extend these principles which were never disputed in other criminal cases, to the crime of publishing a libel; and let us at the same time allow to the jury as our forefathers did before us, the same jurisdiction in that instance, which we agree in rejoicing to allow them in all others, and the system of English law will be wise, harmonious, and complete.

My lord, I have now finished my argument, having answered the several objections to my five original propositions, and established them by all the principles and authorities which appear to me to apply, or to be necessary for their support. In this process I have been unavoidably led into a length not more inconvenient to the court than to myself, and have been obliged to question several judgments which had been before questioned and confirmed.

They, however, who may be disposed to censure me for the zeal which has animated me in this cause, will at least, I hope, have the candour to give me credit for the sincerity of my intentions. It is surely not my interest to stir opposition to the decided authorities of the court in which I practise. With a seat here within the bar, at my time of life, and looking no further than myself, I should have been contented with the law as I found it, and have considered *how little* might be said with decency, rather than *how much*; but feeling as I have ever done upon the subject, it was impossible I should act otherwise. It was the first command and counsel to my youth, always to do what my conscience told me to be my duty, and to leave the consequences to God. I shall carry with me the memory, and I hope, the practice of this parental lesson to the grave. I have hitherto followed it, and have no reason to complain that the adherence to it has been even a temporal sacrifice; I have found it on the contrary, the road to prosperity and wealth, and shall point it out as such to my children. It is impossible in this country to hurt an honest man;

but even if it were, I should little deserve that title, if I could upon any principle, have consented to tamper or temporize with a question which involves, in its determination and its consequences, the liberty of the press, and in that liberty, the very existence of every part of the publick freedom.





## SPEECH

OF THE RIGHT HON. WILLIAM PITT,

IN THE HOUSE OF COMMONS, RELATIVE TO THE NEGOTIATION  
FOR PEACE WITH FRANCE.

**A**CTUATED by a desire to terminate the war which had become so oppressive to the country, the British Government renewed in the year 1797, the negotiation for peace, by sending, on the first of June of that year, an official note to the French minister for foreign affairs, intimating their pacifick dispositions. The overture being acceded to, a negotiation was accordingly opened at Lisle, which, after a tedious discussion of several months, was abruptly broken off by the insolent declaration of the Directory, that it should not continue "except on the principle of complete restitution on the part of Britain of her conquests, made during the war *without any compensation.*" These conditions, so dishonourable to Britain being at once rejected, Lord Malmsbury, her minister, was ordered by the French government to depart from Lisle.

On the thirtieth of December, of the same year, Mr. Pitt moved in the house of commons to take into consideration the message from the throne which he had laid before the house, announcing the failure of the negotiation, and proposed an address to his majesty approving the conduct of ministry as related to that transaction.

In support of the motion, he pronounced one of the most vehement, eloquent, and irresistible harangues to be met with in parliamentary history. This speech is here inserted.

### SPEECH, &c.

SIR,

HAVING come to this House with the firm persuasion, that there never existed an occasion, when the unanimous concurrence of this House might be more justly expected, than on a proposal, to agree in the sentiments contained in the Address which has been read, I must confess myself considerably disappointed, in some degree, even by the speech of my Noble Relation,\* much as I rejoice in the testimony which he has given of his talents and abilities, and still more by the Speech of the Honourable Baronet,† and by the amendment which he has moved. I cannot agree with the Noble Lord in the extent to which he has stated his sentiments, that we ought to rejoice that Peace was not made; much less, Sir, can I feel desirous to accept on the part of myself, or my colleagues, either from my Noble Kinsman, or any other person, the approbation which he was pleased to express, of the manner in which We have concluded the Negotiation—*WE have not concluded the Negotiation*—the Negotiation has been concluded by others; We have not been suffered to continue it; Our claim to merit, if We have any; Our claim to the approbation of our country is, that We persisted in every attempt to conduct that Negotiation to a pacifick termination, as long as our enemies left us not the prospect but the chance or possibility of doing so, consistent with Our Honour, Our Dignity, and Our Safety. We lament and deplore the disappointment of the sincere wishes which we felt, and of the earnest endeavours which we employed; yet, we are far from suffering those sentiments to induce us to adopt the unmanly line of

\* Earl Temple.

† Sir John Sinclair.

conduct that has been recommended by the Honourable Baronet; this is not the moment, to dwell only on Our disappointment, to suppress Our indignation, or to let Our courage, Our constancy, and Our determination be buried in the expressions of unmanly fear, or unavailing regret. Between these two extremes, it is, that I trust Our conduct is directed; and in calling upon the House to join in sentiments between those extremes, I do trust, that if We cannot have the unanimous opinion, We shall have the general and ready concurrence both of the House and of the Country.

Sir, Before I trouble the House, which I am not desirous of doing at length, with a few points which I wish to recapitulate, let me first call to your minds the general nature of the amendment which the Honourable Baronet has, under these circumstances, thought fit to propose, and the general nature of the observations by which he introduced it. He began with deploring the calamities of war, on the general topic, that all war is calamitous. Do I object to this sentiment? No; but is it Our business at a moment when We feel that the continuance of that war is owing to the animosity, the implacable animosity of Our enemy, to the inveterate and insatiable ambition of the present frantick Government of France, not of the people of France, as the Honourable Baronet unjustly stated it; is it Our business at that moment to content ourselves with merely lamenting in commonplace terms the calamities of war, and forgetting that it is part of the duty which, as Representatives of the People, We owe to Our Government and Our Country, to state that the continuance of those evils upon Ourselves, and upon France too, is the fruit only of the conduct of the enemy, that it is to be imputed to them and not to Us.

Sir, The papers which were ordered to be laid on the table have been in every gentleman's hand, and on the materials which they furnish We must be prepared to decide. Can there be a doubt, that all the evils of war, whatever may be their consequences,

are to be imputed solely to his majesty's enemies? Is there any man here, prepared to deny that the delay in every stage of the Negotiation, and its final rupture, are proved to be owing to the evasive conduct, the unwarrantable pretensions, the inordinate ambition, and the implacable animosity of the enemy? I will shortly state what are the points, though it is hardly necessary that I should state them, for they speak loudly for themselves, on which I would rest that proposition; but if there is any man who doubts it, is it the Honourable Baronet? is it He who makes this amendment, leaving out every thing that is honourable to the character of His Own Country, and seeming to court some new complaisance on the part of the French Directory? The Honourable Baronet, who, as soon as He has stated the nature of His amendment, makes the first part of His speech a charge against His Majesty's Ministers, for even having commenced the Negotiation in the manner and under the circumstances in which They did commence it—who makes His next charge Their having persevered in it, when violations of form and practice were insisted upon in the earliest stage of it?—Does He discover that the French Government, whom We have accused of insincerity, have been sincere from the beginning to the end of the Negotiation? Or, after having accused His Majesty's Ministers for commencing and persevering in it, is the Honourable Baronet so afraid of being misconstrued into an idea of animosity against the people of France, that He must disguise the truth; must do injustice to the character and cause of His Own Country, and leave unexplained the cause of the continuance of this great contest? Let Us be prepared to probe that question to the bottom, to form Our opinion upon it, and to render Our conduct conformable to that opinion. This I conceive, to be a manly conduct, and, especially at such a moment, to be the indispensable duty of the House. But let not the Honourable Baronet imagine there is any ground for his apprehension, that by adopting the language of the address, which ascribes

the continuance of the war to the ambition of the enemy, He will declare a system of endless animosity between the nations of Great Britain and France; I say directly the contrary: He who scruples to declare, that in the present moment the Government of France are acting as much in contradiction to the known wishes of the French nation, as to the just pretensions and anxious wishes of the people of Great Britain—He who scruples to declare them the authors of this calamity—deprives Us of the consolatory hope which We are inclined to cherish, of some future change of circumstances more favourable to Our wishes.

It is a melancholy spectacle indeed, to see in any country, and on the ruin of any pretence of liberty, however nominal, shallow, or delusive, a system of tyranny erected, the most galling, the most horrible, the most undisguised in all its parts and attributes that has stained the page of history, or disgraced the annals of the world; but it would be much more unfortunate, if when We see that the same cause carries desolation through France, which extends disquiet and fermentation through Europe; it would be worse indeed, if We attributed to the nation of France that which is to be attributed only to the unwarranted and usurped authority which involves them in misery, and would, if unresisted, involve Europe with them in one common ruin and destruction. Do We state this to be animosity on the part of the people of France? Do We state this in order to raise up an implacable spirit of animosity against that country? Where is one word to that effect in the Declaration to which the Honourable Gentleman has alluded? He complains much of this Declaration, because it tends to perpetuate animosity between two nations which one day or other must be at peace—God grant that day may be soon! but what does that Declaration express upon the subject? Does it express that because the present existing Government of France has acted as it has acted, We forego the wish or renounce the hope that some new situation may lead to happier consequences? On the contrary, His Majesty's lan-

guage is distinctly this : " While this determination continues to prevail on the part of His enemies, His Majesty's earnest wishes and endeavours to restore peace to His subjects must be fruitless, but His sentiments remain unaltered, He looks with anxious expectation to the moment when the Government of France may show a temper and spirit in any degree corresponding with His own." I wish to know whether words can be found in the English language which more expressly state the contrary sentiment to that which the Honourable Baronet imputes; they not only disclaim animosity against the people of France in consequence of the conduct of its Rulers, but do not go the length of declaring, that after all this provocation, even with the present rulers, all treaty is impracticable. Whether it is probable, that acting on the principles upon which they have acquired their power, and while that power continues, they will listen to any system of moderation or justice at home or abroad, it is not now necessary to discuss; but for one, I desire to express my cordial concurrence in the sentiment, so pointedly expressed in that passage of the Declaration in which His Majesty, notwithstanding all the provocation He has received, and even after the recent successes, which by the blessing of Providence have attended His arms, declares His readiness to adhere to the same moderate terms and principles which He proposed at the time of our greatest difficulties, and to conclude peace on that ground, if it can now be obtained, even with this very Government.

I am sensible, that while I am endeavouring to vindicate His Majesty's servants against the charges of the Honourable Baronet, which are sufficiently, however, refuted by the early part of His own speech, I am incurring, in some degree, the censure of the Noble Lord to whom I before alluded. According to His principles and opinions, and of some few others in this country, it is matter of charge against Us that We even harbour in Our minds at this moment, a wish to conclude peace upon the terms which We

think admissible with the present Rulers of France. I am not one of those who can or will join in that sentiment. I have no difficulty in repeating what I stated before, that in their present spirit, after what they have said, and still more, after what they have done, I can entertain little hope of so desirable an event. I have no hesitation in avowing, for it would be idle-ness and hypocrisy to conceal it, that for the sake of mankind in general, and to gratify those sentiments which can never be eradicated from the human heart, I should see with pleasure and satisfaction the termination of a Government whose conduct, and whose origin is such as We have seen that of the Government of France; but that is not the object—that cannot not to be the principle of the war,—whatever wish I may entertain in my own heart, and whatever opinion I may think it fair or manly to avow, I have no difficulty in stating, that violent and odious as is the character of that Government, I verily believe, in the present state of Europe, that if We are not wanting to ourselves, if, by the blessing of Providence, Our perseverance and our resources should enable us to make peace with France upon terms in which We taint not our character, in which We do not abandon the sources of Our Wealth, the means of Our Strength, the defence of what We already possess, if We maintain Our equal pretensions and assert that rank which We are entitled to hold among nations, the moment peace can be obtained on such terms, be the form of government in France what it may, peace is desirable, peace is then anxiously to be sought; but unless it is attained on such terms, there is no extremity of war, there is no extremity of horrible contest, that is not preferable to the name and pretence of peace, which must be in reality a disgraceful capitulation, a base, an abject surrender of every thing that constitutes the pride, the safety, and happiness of England.

These, Sir, are the sentiments of my mind on this leading point, and with these sentiments I shape my conduct between the contending opinions of the no-



ble Lord and of the Honourable Baronet; but there is one observation of the Honourable Baronet, on which I must now more particularly remark—He has discovered that we state the Directory of France to have been all along insincere, and yet take merit for having commenced a negotiation which We ought never to have commenced without being persuaded of their sincerity. This supposed contradiction requires but a few words to explain it. I believe that those who constitute the *present* Government of France never were sincere for a moment in the negotiation; from all the information I have obtained, and from every conjecture I could form, I for one never was so duped as to believe them sincere; but I did believe and I thought I knew, that there was a general prevailing wish for peace, and a predominant sense of its necessity growing and confirming itself in France, and founded on the most obvious and most pressing motives. I did see a spirit of reviving moderation gradually gaining ground and opening a way to the happiest alterations in the general system of that country; I did believe that the violence of that portion of the executive government which, by the late strange revolution of France, unhappily for France itself and for the world, has gained the ascendancy, would have been restrained within some bounds; that ambition must give way to reason; that even phrenzy itself must be controlled and governed by necessity. These were the hopes and expectations I entertained. I did, notwithstanding, feel that even from the outset, and in every step of that negotiation, those who happily had not yet the full power to cut it short in the beginning, who dared not trust the publick eye with the whole of their designs, who could not avow all their principles, unfortunately, nevertheless, did retain from the beginning power enough to control those who had a better disposition, to mix in every part of the negotiation, which they could not then abruptly break off, whatever could impede, embarrass, and perplex, in order to throw upon us, if possible, the odium of its failure.

Sir, The system of France is explained by the very objections that are made against Our conduct. The violent party could not, as I have stated, at once break off the treaty on their part, but they wished to drive England to the rupture; they had not strength enough to reject all negotiation, they had strength enough to mix in every step those degradations and insults, those inconsistent and unwarranted pretensions in points even of subordinate importance, which reduced ministers to that option which I have described; but which they decided in a way that has exposed them to the censure of the Honourable Baronet; they chose rather to incur the blame of sacrificing punctilios (at some times essential) rather than afford the enemy an opportunity of evading this plain question—Is there any ground, and, if any, what, upon which you are ready to conclude? To that point it was our duty to drive them; we have driven them to that point; they would tell us no terms, however exorbitant and unwarrantable, upon which they would be ready to make peace.—What would have been the Honourable Baronet's expedient to avoid this embarrassment? It would have been, as he has this day informed us, an address which he had thought of moving in the last session, and which, indeed, I should have been less surprised had he moved, than if the House had concurred in it; he would have moved that no *projet* should be given in till the enemy were prepared to present a *contre projet*; if it was a great misfortune that that address was not moved, I am afraid some of the guilt belongs to me, because the Honourable Baronet did suggest such an idea, and I did with great sincerity and frankness tell him, that if he was really a friend to peace, there was no motion he could make so little calculated to promote that object, and I did prevail upon the Honourable Baronet to give up the intention. If I am right in the supposition I have stated, if I am right in thinking that our great object was to press France to this point, and to put the question, If you have any terms to offer, what are they? Was there any one way by which we could

make it so difficult for them to retain any pretence of a desire of peace, as to speak out ourselves, and call upon them either for agreement, or for modification, or for some other plan in their turn? By not adopting the Honourable Baronet's plan, we have put the question beyond dispute, whether peace was attainable at last, and whether Our advances would or would not be met on the part of France; and I shall to the latest hour of my life rejoice that We were fortunate enough to place this question in the light which defies the powers of misrepresentation, in which no man can attempt to perplex it, and in which it presents itself this day for the decision of the House and of the Nation, and calls upon every individual who has at stake the Publick Happiness and his own, to determine for himself, whether this is or is not a crisis which requires his best exertions in the Defence of his Country.

To show which, I shall now proceed, notwithstanding the reproach which has been thrown on Our line of conduct, to show the system even of obstinate forbearance, with which We endeavoured to overcome preliminary difficulties, the determined resolution on Our part to overlook all minor obstacles, and to come to the real essence of discussion upon the terms of peace. To show this, it is not necessary to do more than to call to the recollection of the House the leading parts of the Declaration of His Majesty; I mean to leave that part of the subject also without the possibility of doubt or difference of opinion. It is certainly true that even previous to any of the circumstances that related to the preliminary forms of the negotiation, the prior conduct of France had offered to any Government that was not sincerely and most anxiously bent upon peace, sufficient ground for the continuance of hostilities; it is true that, in the former negotiation at Paris, Lord Malmesbury was finally sent away, not upon a question of terms of peace, not upon a question of the cession of European or Colonial Possessions, but upon the haughty demand of a previous preliminary, which should give up every

thing on the part of the allies, and which should leave them afterwards every thing to ask, or rather to require. It is true it closed in nearly the same insulting manner as the second mission; it is true too that subsequent to that period, in the preliminaries concluded between the Emperor and France, it was agreed to invite the allies of each party to a congress, which, however, was never carried into execution. It was under these circumstances that His Majesty, in the earnest desire of availing himself of that spirit of moderation which had begun to show itself in France, determined to renew those proposals which had been before slighted and rejected; but when this step was taken, what was the conduct of those who have gained the ascendancy in France? On the first application to know on what ground they were disposed to negotiate, wantonly, as will be shown by the sequel, and for no purpose but to prevent even the opening of the conferences, they insisted upon a mode of negotiation very contrary to general usage and convenience, contrary to the mode in which they had terminated war with any of the Belligerent Powers, and directly contrary to any mode which they themselves afterwards persisted in following in this very negotiation with us. They began by saying they would receive no proposals for preliminaries, but that conferences should be held for the purpose of concluding at once a definitive treaty.

His majesty's answer was, that it was His desire to adopt that mode only which was most likely to accelerate the object in view, and the powers of his Plenipotentiary would apply to either object, either preliminary or definitive. They appeared content with his answer, but what was the next step? In the simple form of granting a passport for the Minister, at the moment they were saying they preferred a definitive peace, because it was the most expeditious; in that very passport, which in all former times has only described the character of the Minister, without entering into any thing relating to the terms or mode of negotiating, they insert a condition relative to his

powers, and that inconsistent with what His Majesty had explained to be the nature of the powers he had intended to give, and with which they had apparently been satisfied; they made it a passport not for a Minister coming to conclude peace generally, but applicable only to a definitive and *separate* peace.

This proceeding was in itself liable to the most obvious objection, but it is more important, as an instance to show how, in the simplest part of the transaction, the untractable spirit of France discovered itself, it throws light on the subsequent part of the transaction, and shows the inconsistencies and contradictions of their successive pretensions. As to the condition then made in the passport for the first time, that the negotiation should be for a separate peace, His Majesty declared that he had no choice between a definitive and a preliminary treaty, but as to a separate peace, His honour and good faith, with regard to his ally the Queen of Portugal, would not permit it: He therefore stated his unalterable determination to agree to no treaty, in which Portugal should not be included, expressing at the same time, his readiness that France should treat on the part of Holland and Spain.

On this occasion, the Good Faith of this Country prevailed; the system of Violence and Despotism, was not then ripe, and therefore His Majesty's demand to treat for Portugal, was acquiesced in by the Directory. They, at the same time, undertook to treat on their part, for their allies Holland and Spain, as well as for themselves, though in the subsequent course of the Negotiation, they pretended to be without sufficient power to treat for either.

I must here entreat the attention of the House to the next circumstance which occurred. When the firmness of His Majesty, His anxious and sincere desire to terminate the Horrors of War, and His uniform moderation overcame the violence, and defeated the designs of the Members of the Executive Government of France, they had recourse to another expedient—the most absurd, as well as the most un-

Justifiable: They adverted to the Rupture of the former Negotiation, as if that Rupture was to be imputed to His Majesty—and this insinuation was accompanied with a personal reflection upon the Minister who was sent by His Majesty, to treat on the part of this Country. His Majesty, looking anxiously as he did to the conclusion of Peace, disdained to reply otherwise, than by observing, that this was not a fit subject to be agitated at the moment of renewing a negotiation, and that the circumstances of the transaction were well enough known to Europe and to the world. And the result of this Negotiation has confirmed what the former had sufficiently proved, that His Majesty could not have selected, in the ample store of talents which his Dominions furnish, any person better qualified to do justice to his sincere and benevolent desire, to promote the restoration of Peace, and his firm and unalterable determination to maintain the Equity and Honour of His Kingdom.

In despite of these obstacles and others more minute, the French Plenipotentiary at length arrived at Lisle, the full powers were transmitted to the respective Governments, and were found unexceptionable, though the supposed defect of these full powers is three months after alleged as a cause for the Rupture of the Negotiation, and what is more remarkable, it did not happen, that the French full powers were on the face of them, much more limited than Ours, for they only enabled the Commissioners of the Directory to act according to the Instructions they were to receive from time to time. On this point it is not necessary for me to dwell, but I desire the House to treasure it in their memory, when we come to the question of pretence for the rupture of the Negotiation.

Then, Sir, I come to the point in which we have returned the censure of the Honourable Baronet, for adhering in on Our part a project.—To his opinion, I did not subscribe, for the reasons that I stated before. But can there be a stronger proof of His Majesty's sincerity, than his waving so many points important in themselves, rather than suffer the Nego-

tiation to be broken off? What was Our situation? We were to treat with a Government, that had in the outset expressed, that they would treat truly definitively; and from every part of their conduct which preceded the meeting of Our Plenipotentiary, and their Commissioners, We might have expected that they would have been prepared to answer Our project almost in twenty-four hours after it was delivered. We stood with respect to France in this predicament. We had nothing to ask of them: the question only was, how much We were to give of that which the valour of His Majesty's arms had acquired from them, and from their Allies. In this situation, surely We might have expected, that, before We offered the price of peace, they would at least have condescended to say what were the sacrifices which they expected Us to make. But, Sir, in this situation, what species of project was it that was presented by His Majesty's Minister? A project the most distinct, the most particular, the most conciliatory and moderate, that ever constituted the first words spoken by any Negotiator; and yet of this project what have We heard in the language of the French Government? What have We seen dispersed through all Europe by that press in France which knows no sentiments but what French Police dictates? What have We seen dispersed by that English press which knows no other use of English liberty, but servilely to retail and transcribe French Opinions? We have been told, that it was a project that refused to embrace the terms of Negotiation. Gentlemen have read the papers: how does that fact stand? In the original project We agreed to give up the conquests We had made from France and her Allies, with certain exceptions. For those exceptions a blank was left, in order to ascertain whether France was desirous that the exceptions should be divided between her and her Allies, or whether she continued to insist upon a complete compensation, and left England to look for compensation only to her Allies. France, zealous as she pretends to be for her Allies,

had no difficulty in authorizing her ministers to declare that she must retain every thing for herself. The blank was then filled up, and it was then distinctly stated, how little, out of what We had, We demanded to keep; in one sense, it remains a blank still. We did not attempt to preclude France from any other mode of filling it up, but while We stated the utmost extent of Our own views, We left open to full explanation whatever points the Government of France could desire. We called upon them, and repeatedly solicited them, to state something as to the nature of the terms which they proposed, if they objected to Ours. It was thus left open to modification, alteration, or concession: But this is not the place, this is not the time, in which I am to discuss, whether those terms in all given circumstances, or in the circumstances of that moment, were or were not the ultimate terms upon which Peace ought to be accepted or rejected, if it was once brought to the point when an ultimatum could be judged of. I will not argue whether some great concession might not have been made with the certainty of Peace, or whether the terms proposed constituted an offer of Peace upon more favourable grounds for the enemy than His Majesty's Ministers could justify. I argue not the one question or the other, it would be inconsistent with the publick interest and Our duty, that We should here state or discuss it; all that I have to discuss is, whether the terms, upon the face of them, appear honourable, open, frank, distinct, sincere, and a pledge of moderation; and I leave it to the good sense of the House, whether there can exist a difference of opinion upon this point.

Sir, What was it We offered to renounce to France? In one word, all that We had taken from them. What did this consist of? the valuable, and almost under all circumstances, the impregnable island of Martinique, various other West India possessions, Saint Lucia, Tobago, the French part of Saint Domingo, the Settlements of Pondicherry and Chandernagore; all the French factories and means of trade.



in the East Indies; and the Islands of Saint Pierre and Miquelon; and for what were these renunciations to be made? For peace, and for peace only. And to whom? To a nation which had obtained from His Majesty's dominions in Europe nothing in the course of the war: which had never met Our fleets but to add to the catalogue of our victories, and to swell the melancholy lists of their own captures and defeats. To a power which had never separately met the arms of This country by land, but to carry the glory and prowess of the British name to a higher pitch, and to a country whose commerce is unheard of, whose navy is annihilated, whose distress, confessed by themselves (however it may be attempted to be dissembled by their panegyrists in this or any other country) is acknowledged by the sighs and groans of the people of France, and proved by the expostulations and remonstrations occasioned by the violent measures of its Executive Government—such was the situation in which We stood—such the situation of the enemy when We offered to make those important concessions, as the price of Peace. What was the situation of the Allies of France? From Spain, who, from the moment she had deserted Our cause and enlisted on the part of the enemy, only added to the number of Our conquests, and to her own indelible disgrace, We made claim of one island, the island of Trinidad, a claim not resting on the mere naked title of possession, to counterbalance the general European aggrandizement of France, but as the price of something that we had to give by making good the title to the Spanish part of Saint Domingo, which Spain had ceded without right, and which cession could not be made without Our guarantee. To Holland, having in our hands the whole means of their commerce, the whole source of Their wealth, We offered to return almost all that was valuable and lucrative to them, in the mere consideration of commerce; We desired in return to keep what to them in a pecuniary view would be only a burthen, in a political view worse than useless, because they had

not the means to keep it, what, had We granted it, would have been a sacrifice, not to them, but to France; what would in future have enabled her to carry on her plan of subjugation against the Eastern possessions of Holland itself, as well as against those of Great Britain. All that We asked, was not indemnification for what We had suffered, but the means of preserving Our own possessions and the strength of Our naval empire; We did this at a time when Our enemy was feeling the pressure of war, and who looks at the question of peace without some regard to the relative situation of the country, with which you are contending? Look then at their trade; look at their means; look at the posture of their affairs: look at what We hold, and at the means We have of defending ourselves, and Our enemy of, resisting Us, and tell me, whether this offer was or was not a proof of sincerity, and a pledge of moderation. Sir, I should be ashamed of arguing it. I confess, I am apprehensive We may have gone too far in the first proposals We made, rather than shown any backwardness in the Negotiation; but it is unnecessary to argue this point.

Our proposal was received and allowed by the French Plenipotentiaries, and transmitted for the consideration of the Directory; months had elapsed in sending couriers weekly, and daily, from Paris to Lisle, and from Lisle to Paris; they taught Us to expect from time to time a consideration of this subject, and an explicit answer to our project. But the first attempt of the Directory to Negotiate, after having received Our project, is worthy of remark. They required that We, whom they had summoned to a definitive treaty, should stop and discuss preliminary points, which were to be settled without knowing whether, when We had agreed to them all, We had advanced one inch; We were to discuss, whether His Majesty would renounce the title of King of France, a harmless feather at most in the Crown of England; We were to discuss, whether We would restore those ships taken at Toulon, the acquisition

of valour, and which We were entitled upon every ground to hold; We were to discuss, whether We would renounce the Mortgage which We might possess on the Netherlands, and which engaged much of the Honourable Baronet's attention: but it does so happen, that what the Honourable Baronet considered as so important, was of no importance at all. For a Mortgage on the Netherlands We have none, and consequently, We have none to renounce; therefore, upon that condition, which they had no right to ask, and We had no means of granting, We told them the true state of the case, and that it was not worth talking about.

The next point which occurred, is of a nature which is difficult to dwell upon without indignation: We were waiting the fulfilment of a promise which had been made repeatedly, of delivering to Our Ambassador a Counter-Project: when they who had desired Us to come for the purpose of concluding a Definitive Treaty, propose that We should subscribe as a *sine qua non*, *Preliminary* that We were ready, in the first instance, to consent to give up all that We had taken, and then to hear what they had further to ask. Is it possible to suppose, that such a thing could be listened to by any country that was not prepared to prostrate itself at the feet of France, and in that abject posture to adore its Conqueror, to solicit new insults, to submit to demands still more degrading and ignominious, and to cancel at once the honour of the British name. His Majesty had no hesitation in refusing to comply with such insolent and unwarrantable demands: Here again the House will see, that the spirit of the violent part of the French Government which had the insolence to advance this proposition, had not acquired power and strength in that state of the Negotiation to adhere to it; His Majesty's explanations and remonstrances for a time prevailed, and an interval ensued, in which We had a hope, that We were advancing to a pacification. His Majesty's refusal of this demand was received by the French Plenipotentiaries with

assurances of a pacifick disposition, was transmitted to their Government, and was seconded by a continued and repeated repetition of promises, that a counter project should be presented; pretending that they were under the necessity of sending to their Allies an account of what passed: and that they were endeavouring to prevail on them to accede to proposals for putting an end to the calamities of war—to terminate the calamities of that war into which those Allies were forced, in which they were retained by France alone; and in which they purchased nothing but sacrifices to France and misery to themselves. We were told indeed, in a conference that followed, that they had obtained an answer, but that not being sufficiently satisfactory, it was sent back to be considered. This continued during the whole period until that dreadful catastrophe of the fourth of September; even after that event, the same pretence was held out: they peremptorily promised the counter project in four days; the same pacifick professions were renewed, and Our Minister was assured, that the change of circumstances in France should not be a bar to the Pacification. Such was the uniform language of the Plenipotentiaries in the name of the Government—how it is proved by their actions, I have already stated to the House. After this series of professions, what was the first step taken, to go on with the *Négotiation* in this spirit of conciliation? Sir, the first step was to renew, as His Majesty's Declaration has well stated, in a shape still more offensive, the former inadmissible and rejected demand; the rejection of which had been acquiesced in by themselves two months before, and during all which time, We had been impatiently waiting for the performance of their promises. That demand was the same that I have already stated in substance, that Lord Malmesbury should explain to them, not only his powers, but also his instructions, and they asked not for the formal extent of his power, which would give solidity to what he might conclude in the King's Name, but they asked an irrevocable

pledge, that he would consent to give up all that we had taken from them and from their Allies, without knowing how much more they had afterwards to ask. It is true they endeavoured to convince Lord Malmesbury, that although an avowal of his instructions was demanded, it would never be required that he should act upon it, for there was a great difference between knowing the extent of the Powers of a Minister, and insisting upon their exercise. And here I would ask the Honourable Baronet, whether he thinks, if in the first instance, We had given up all to the French Plenipotentiaries, they would have given it all back again to Us? Suppose I was Ambassador from the French Directory, and the Honourable Baronet was Ambassador from Great Britain, and I were to say to him, will you give up all you have gained, it would only be a handsome thing in you, as an Englishman, and no ungenerous use shall be made of it, would the Honourable Baronet expect me, as a French Ambassador, to say, I am instructed, from the good nature of the Directory, to say, you have acted handsomely, and I now return what you have so generously given. Should We not be called Children and Drivellers, if We could act in this manner? and indeed, the French Government could be nothing but Children and Drivellers if they could suppose that we should have acceded to such a proposal—But they are bound it seems, by sacred Treaties; they are bound by immutable Laws; they are sworn when they make peace, to return every thing to their Allies, and who shall require of France for the safety of Europe, to depart from its own pretensions to honour and independence.

If any person can really suppose that this country could have agreed to such a proposition, or that such a negotiation was likely to lead to a good end; all I can say is, that with such a man I will not argue. I leave others to imagine what was likely to have been the end of a Negotiation, in which it was to have been settled as a preliminary, that you were to give up all

that you have gained; and when, on the side of your enemy, not a word was said of what he had to propose afterwards. They demand of your Ambassadour to show to them, not only his powers, but also his instructions, before they explain a word of theirs: and they tell you too, that you are never to expect to hear what their powers are, until you shall be ready to accede to every thing which the Directory may think fit to require. This is certainly the substance of what they propose, and they tell you also, that they are to carry on the Negotiation from the instructions which their Plenipotentiaries are to receive from time to time from them. You are to have no power to instruct your Ambassadour; you are to show to the enemy at once all you have in view, and they will only tell you from time to time, as to them shall seem meet, what demands they shall make.

It was thus it was attempted, on the part of the French, to commence the Negotiation.—In July, this demand was made to Lord Malmesbury. He stated, that his powers were ample. In answer to this, they went no further than to say, that if he had no such power as what they required, he should send to England to obtain it. To which he replied, that he had not, nor should he have it if he sent. In this they acquiesce, and attempt to amuse Us for two months. At the end of that time, the Plenipotentiaries say to Lord Malmesbury, not what they said before, send to England for power to accede to proposals which you have already rejected; but go to England yourself for such powers, in order to obtain peace.

Such was the winding up of the Negotiation: such was the way in which the prospect of peace has been disappointed by the conduct of France; and I must look upon the dismissal of Lord Malmesbury as the last stage of the Negotiation, because the undisguised insult by which it was pretended to be kept up for ten days after Lord Malmesbury was sent away, was really below comment. You send him to ask for those powers which you were told he had not, and in the refusal of which you acquiesced: you have asked as

a preliminary that which is monstrous and exorbitant: that preliminary you were told would not be complied with, and yet the performance of that preliminary you made the *sine qua non* conditions of his return. Such was the last step by which the French Government has shown that it had feeling enough left to think it necessary to search for some pretext to colour its proceedings; but they are such proceedings that no pretext or artifice can cover them, as will appear more particularly from the papers officially communicated to the House.

But here the subject does not rest; if We look to the whole complexion of this transaction the duplicity, the arrogance, and violence which has appeared in the course of the Negotiation, if We take from thence Our opinion of its general result, We shall be justified in Our conclusion, not that the people of France, not that the whole Government of France, but that part of the Government which had too much influence, and has now the whole ascendancy, never was sincere; was determined to accept of no terms but such as would make it neither durable nor safe, such as could only be accepted by this Country by a surrender of all its interests, and by a sacrifice of every pretension to the Character of a Great, a Powerful, or an Independent Nation.

This, Sir, is inference no longer: you have their own open avowal: you have, stated in the subsequent Declaration of France itself, that it is not against your Commerce, that it is not against your Wealth, it is not against your Possessions in the East, or Colonies in the West, it is not against even the source of your maritime Greatness, it is not against any of the appendages of your Empire, but against the very essence of your liberty, against the foundation of your Independence, against the Citadel of your Happiness, against your Constitution itself, that their hostilities are directed. They have themselves announced and proclaimed the proposition, that what they mean to bring with their invading army is the Genius of *their* liberty: I desire no other word to express the subver-

sion of the British Constitution,—and the substitution of the most malignant and fatal contrast,—and the annihilation of British Liberty, and the obliteration of every thing that has rendered you a Great, a Flourishing, and a Happy People.

This is what is at issue; for this are We to declare Ourselves in a manner that deprecates the rage which Our enemy will not dissemble, and which will be little moved by Our entreaty. Under such circumstances are We ashamed or afraid to declare, in a firm and manly tone, Our resolution to defend Ourselves, or to speak the language of truth with the energy that belongs to Englishmen united in such a cause? Sir, I do not scruple for one to say, if I knew nothing by which I could state to myself a probability of the contest terminating in our favour, I would maintain that the contest with its worst chances is preferable to an acquiescence in such demands.

If I could look at this as a dry question of prudence; if I could calculate it upon the mere grounds of interest, I would say, if We love that Degree of National Power which is necessary for the Independence of the Country, and its safety; if We regard Domestic Tranquillity, if We look at individual enjoyment, from the highest to the meanest among Us, there is not a man, whose stake is so great in the country, that he ought to hesitate a moment in sacrificing any portion of it to oppose the violence of the enemy; nor is there, I trust, a man in this Happy and Free Nation, whose stake is so small, that would not be ready to sacrifice his life in the same cause. If We look at it with a view to safety, this would be Our conduct; but if we look at it upon the principle of true honour, of the character which We have to support, of the example which We have to set to the other nations of Europe, if We view rightly the lot in which Providence has placed Us, and the contrast between Ourselves and all the other Countries in Europe, Gratitude to that Providence should inspire Us to make every effort in such a Cause. There may be Danger, but on the one side there is Danger



accompanied with Honour; on the other side, there is Danger with Indelible Shame and Disgrace: upon such an alternative, Englishmen will not hesitate. I wish to disguise no part of my sentiments, upon the grounds on which I put the issue of the contest. I ask; whether up to the principles I have stated, We are prepared to act? having done so, my opinion is not altered: my hopes, however, are animated from the reflection that the means of Our safety are in Our own hands; for there never was a period when We had more to encourage Us; in spite of heavy burdens, the radical strength of the Nation never showed itself more conspicuous; its revenue never exhibited greater proofs of the wealth of the Country; the same objects which constitute the Blessings We have to fight for, furnish Us with the means of continuing them. But it is not upon that point I rest; there is one great resource, which I trust will never abandon Us, and which has shone forth in the English Character, by which We have preserved Our Existence and Fame, as a Nation, which I trust We shall be determined never to abandon under any extremity, but shall join Hand and Heart in the solemn pledge that is proposed to Us, and declare to His Majesty, *that We know great exertions are wanting, that We are prepared to make them, and at all events determined to stand or fall by the LAWS, LIBERTIES, and RELIGION of Our Country.*

## MR. BURKE'S SPEECH,

ON PRESENTING A PLAN FOR THE BETTER SECURITY OF THE  
INDEPENDENCE OF PARLIAMENT, AND THE ECONOMICAL  
REFORMATION OF THE CIVIL AND OTHER ESTABLISH-  
MENTS.

**TOWARDS** the close of the American war, it is well known that Great Britain was severely pressed by an extraordinary combination of difficulties, and, however popular the contest might have been in its origin, that the sentiments of the nation had undergone a considerable change respecting it.

Not the least of the causes of this national discontent which, whether well founded or not, very widely prevailed, was a notion that the publick money instead of being husbanded with care, as it ought to be at a season of such accumulated distress, was squandered with idle profusion, and wasted by unnecessary expense.

*Economy*, indeed, became the general cry throughout the kingdom. From most of the counties, and principal cities, petitions were sent to parliament praying a thorough reform in the management of the revenue, and that a system should be introduced of vigilant attention, and strict frugality.

Conformably to these petitions, Mr. Burke, who was then an active and highly distinguished member of the opposition, matured a "*Plan of reform in the constitution of several parts of the publick economy.*" To carry it into execution, he moved in the house of commons, on the eleventh of February, 1780, for leave to bring in certain bills for the better regulation

*of his majesty's civil establishments, for the sale of forests and other crown lands, for more perfectly uniting to the crown the principality of Wales, the counties palatine of Chester and Lancaster, and the duchy of Cornwall.* But these bills, after a violent contest, were all lost by a small majority.

The speech which he delivered in their defence is "replete with financial principle, accurate information as to the detail of establishments, their objects and use, and embellished with all the beauties of eloquence. It is the speech of wisdom, selecting from the stores of knowledge what might be practically beneficial."

Not discouraged by this discomfiture, Mr. Burke revived his bills at the succeeding session. But they were again rejected, though supported by the influence and talents of many of the leading characters of the nation. In this debate, the speech which attracted the greatest attention was the late Mr. Pitt's. It was the first time he had been heard in Parliament. Never was a *debut* more splendid. The fame of his talents and previous discipline had raised expectations of no ordinary pitch. But they were more than realized. From that moment he became the favourite of the house, and the darling of the country.

On a change of ministry which put Mr. Burke and his friends into power, a message was received from the throne, April the fifteenth, 1782, stating, "that his majesty taking into consideration the supplies which had been given with so much liberality, and supported with such uncommon firmness and fortitude by his people in the present extensive war, recommended to his faithful commons the consideration of an effectual *plan of economy throughout all the branches of the publick expenditure.*"

This message was introductory to Mr. Burke's bill, which coming forward under such auspices was now carried without difficulty.

## SPEECH, &amp;c.

MR. SPEAKER,

I RISE, in acquittal of my engagement to the house, in obedience to the strong and just requisition of my constituents, and, I am persuaded, in conformity to the unanimous wishes of the whole nation, to submit to the wisdom of parliament, "A plan of reform in the constitution of several parts of the publick economy."

I have endeavoured, that this plan should include in its execution, a considerable reduction of improper expense; that it should effect a conversion of unprofitable titles into a productive estate; that it should lead to, and indeed almost compel, a provident administration of such sums of publick money as must remain under discretionary trust; that it should render the incurring of debts on the civil establishment (which must ultimately affect national strength and national credit) so very difficult, as to become next to impracticable.

But what, I confess, was uppermost with me, what I bent the whole force of my mind to, was the reduction of that corrupt influence, which is itself the perennial spring of all prodigality, and of all disorder; which loads us, more than millions of debt; which takes away vigour from our arms, wisdom from our councils, and every shadow of authority and credit from the most venerable parts of our constitution.

Sir, I assure you, very solemnly, and with a very clear conscience, that nothing in the world has led me to such an undertaking, but my zeal for the honour of this house, and the settled, habitual, systematick affection I bear to the cause, and to the principles of government.

I enter perfectly into the nature and consequences of my attempt; and I advance to it with a tremor that shakes me to the inmost fibre of my frame. I feel, that I engage in a business, in itself most ungracious, totally wide of the course of prudent conduct;

and I really think, the most completely adverse that can be imagined, to the natural turn and temper of my own mind. I know, that all parsimony is of a quality approaching to unkindness; and that, (on some person or other) every reform must operate as a sort of punishment. Indeed the whole class of the severe and restrictive virtues, are at a market almost too high for humanity. What is worse, there are very few of those virtues which are not capable of being imitated, and even out-done in many of their most striking effects, by the worst of vices. Malignity and envy will carve much more deeply, and finish much more sharply, in the work of retrenchment, than frugality and providence. I do not, therefore wonder that gentlemen have kept away from such a task, as well from good nature as from prudence. Private feeling might, indeed, be overborn by legislative reason; and a man of a long sighted and strong nerved humanity, might bring himself, not so much to consider from whom he takes a superfluous enjoyment, as for whom in the end he may preserve the absolute necessities of life.

But it is much more easy to reconcile this measure to humanity, than to bring it to any agreement with prudence. I do not mean that little, selfish, pitiful bastard thing, which sometimes goes by the name of a family in which it is not legitimate, and to which it is a disgrace; I mean even that public and enlarged prudence, which, apprehensive of being disabled from rendering acceptable services to the world, withholds itself from those that are invidious. Gentlemen who are, with me, verging towards the decline of life, and are apt to form their ideas of kings from kings of former times, might dread the anger of a reigning prince;—they who are more provident of the future, or by being young are more interested in it, might tremble at the resentment of the successor; they might see a long, dull, dreary, unvaried vista of despair and exclusion, for half a century, before them. This is no pleasant prospect at the outset of a political journey.

Besides this, sir, the private enemies to be made in all attempts of this kind, are innumerable; and their enmity will be the more bitter, and the more dangerous too, because a sense of dignity will oblige them to conceal the cause of their resentment. Very few men of great families and extensive connexions but will feel the smart of a cutting reform, in some close relation, some bosom friend, some pleasant acquaintance, some dear protected dependant. Emolument is taken from some; patronage from others; objects of pursuit from all. Men, forced into an involuntary independence, will abhor the authors of a blessing which in their eyes has so very near a resemblance to a curse. When officers are removed, and the offices remain, you may set the gratitude of some against the anger of others; you may oppose the friends you oblige against the enemies you provoke. But services of the present sort create no attachments. The individual good felt in a publick benefit, is comparatively so small, comes round through such an involved labyrinth of intricate and tedious revolutions; whilst a present personal detriment is so heavy where it falls, and so instant in its operation, that the cold commendation of a publick advantage never was, and never will be, a match for the quick sensibility of a private loss: and you may depend upon it, sir, that when many people have an interest in railing, sooner or later, they will bring a considerable degree of unpopularity upon any measure. So that, for the present at least, the reformation will operate against the reformers; and revenge (as against them at the least) will produce all the effects of corruption.

This, sir, is almost always the case, where the plan has complete success. But how stands the matter in the mere attempt? Nothing, you know, is more common, than for men to wish, and to call loudly too, for a reformation, who, when it arrives, do by no means like the severity of its aspect. Reformation is one of those pieces which must be put at some distance in order to please. Its greatest favourers love it better in the abstract than in the substance. When

any old prejudice of their own, or any interest that they value, is touched, they become scrupulous, they become captious, and every man has his separate exception. Some pluck out the black hairs, some the gray; one point must be given up to one; another point must be yielded to another; nothing is suffered to prevail upon its own principle: the whole is so frittered down, and disjointed, that scarcely a trace of the original scheme remains! Thus, between the resistance of power, and the unsystematical process of popularity, the undertaker and the undertaking are both exposed, and the poor reformer is hissed off the stage, both by friends and foes.

Observe, sir, that the apology for my undertaking (an apology which, though long, is no longer than necessary) is not grounded on my want of the fullest sense of the difficult and invidious nature of the task I undertake. I risk odium if I succeed, and contempt if I fail. My excuse must rest in mine and your conviction of the absolute, urgent necessity there is, that something of the kind should be done. If there is any sacrifice to be made, either of estimation or of fortune, the smallest is the best. Commanders in chief are not to be put upon the forlorn hope. But indeed it is necessary that the attempt should be made. It is necessary from our own political circumstances; it is necessary from the operations of the enemy; it is necessary from the demands of the people; whose desires, when they do not militate with the stable and eternal rules of justice and reason (rules which are above us, and above them) ought to be as a law to a house of commons.

As to our circumstances, I do not mean to aggravate the difficulties of them, by the strength of any colouring whatsoever. On the contrary, I observe, and observe with pleasure, that our affairs wear rather a more promising aspect than they did on the opening of the session. We have had some leading successes. But those who rate them at the highest (higher a great deal indeed than I dare to do) are of opinion, that, upon the ground of such advantages, we cannot at

this time hope to make any treaty of peace, which would not be ruinous and completely disgraceful. In such an anxious state of things, if dawns of success serve to animate our diligence, they are good; if they tend to increase our presumption, they are worse than defeats. The state of our affairs shall then be as promising as any one may choose to conceive it: it is, however, but promising. We must recollect, that with but half of our natural strength, we are at war against confederated powers who have singly threatened us with ruin: we must recollect, that whilst we are left naked on one side, our other flank is uncovered by any alliance; that whilst we are weighing and balancing our successes against our losses, we are accumulating debt to the amount of at least fourteen millions in the year. That loss is certain.

I have no wish to deny, that our successes are as brilliant as any one chooses to make them; our resources too may, for me, be as unfathomable as they are represented. Indeed they are just whatever the people possess, and will submit to pay. Taxing is an easy business. Any projector can contrive new impositions; any bungler can add to the old. But is it altogether wise to have no other bounds to your impositions, than the patience of those who are to bear them?

All I claim upon the subject of your resources is this; that they are not likely to be increased by wasting them.—I think I shall be permitted to assume, that a system of frugality will not lessen your riches, whatever they may be;—I believe it will not be hotly disputed, that those resources which lie heavy on the subject, ought not to be objects of preference; that they ought not to be the *very first choice*, to an honest representative of the people.

This is all, sir, that I shall say upon our circumstances and our resources: I mean to say a little more on the operations of the enemy, because this matter seems to me very natural in our present deliberation. When I look to the other side of the



water, I cannot help recollecting what Pyrrhus said on reconnoitering the Roman camp, "These barbarians have nothing barbarous in their discipline." When I look, as I have pretty carefully looked, into the proceedings of the French king, I am sorry to say it, I see nothing of the character and genius of arbitrary finance; none of the bold frauds of bankrupt power; none of the wild struggles and plunges of despotism in distress; no lopping off from the capital of debt; no suspension of interest; no robbery under the name of loan; no raising the value, no debasing the substance of the coin. I see neither Louis the fourteenth, nor Louis the fifteenth. On the contrary, I behold with astonishment, rising before me, by the very hands of arbitrary power, and in the very midst of war and confusion, a regular, methodical system of publick credit; I behold a fabrick laid on the natural and solid foundations of trust and confidence among men; and rising, by fair gradations, order over order, according to the just rules of symmetry and art. What a reverse of things! Principle, method, regularity, economy, frugality, justice to individuals, and care of the people, are the resources with which France makes war upon Great Britain. God avert the omen! But if we should see any genius in war and politicks arise in France, to second what is done in the bureau!—I turn my eyes from the consequences.

To the last kind of necessity, the desires of the people, I have but a very words to say. The minister seems to contest this point; and affects to doubt, whether the people do really desire a plan of economy in the civil government. Sir, this is too ridiculous. It is impossible that they should not desire it. It is impossible that a prodigality which draws its resources from their indigence, should be pleasing to them. Little factions of pensioners, and their dependants, may talk another language. But the voice of nature is against them, and it will be heard. The people of England will not, they cannot take it kindly, that representatives should refuse to their constituents, what

an absolute sovereign voluntarily offers to his subjects. The expression of the petitions is, that "before any new burthens are laid upon this country, effectual measures be taken by this house, to inquire into, and correct, the gross abuses in the expenditure of the publick money."

This has been treated by the noble lord in the blue riband, as a wild, factious language. It happens, however, that the people in their address to us, use almost word for word the same terms as the king of France uses in addressing himself to his people; and it differs only, as it falls short of the French king's idea of what is due to his subjects. "To convince," says he, "our faithful subjects of the desire we entertain not to recur to new impositions, until we have first exhausted all the resources which order and economy can possibly supply," &c. &c.

These desires of the people of England, which come far short of the voluntary concessions of the king of France, are moderate indeed. They only contend that we should interweave some economy with the taxes with which we have chosen to begin the war. They request, not that you should rely upon economy exclusively, but that you should give it rank and precedence, in the order of the ways and means of this single session.

But if it were possible, that the desires of our constituents, desires which are at once so natural, and so very much tempered and subdued, should have no weight with a house of commons, which has its eye elsewhere; I would turn my eyes to the very quarter to which theirs are directed. I would reason this matter with the house, on the mere policy of the question; and I would undertake to prove, that an early dereliction of abuse, is the direct interest of government, of government taken abstractedly from its duties, and considered merely as a system intending its own conservation.

If there is any one eminent criterion, which, above all the rest, distinguishes a wise government from an administration weak and improvident, it is this;

—“well to know the best time, and manner of yielding, what it is impossible to keep.”—There have been, sir, and there are, many who choose to chicané with their situation, rather than be instructed by it. Those gentlemen argue against every desire of reformation, upon the principles of a criminal prosecution. It is enough for them to justify their adherence to a pernicious system, that it is not of their contrivance; that it is an inheritance of absurdity, derived to them from their ancestors; that they can make out a long and unbroken pedigree of mismanagers that have gone before them. They are proud of the antiquity of their house; and they defend their errors, as if they were defending their inheritance: afraid of derogating from their nobility, and carefully avoiding a sort of blot in their scutcheon, which they think would degrade them for ever.

It was thus that the unfortunate Charles I. defended himself on the practice of the Stuart who went before him, and of all the Tudors; his partisans might have gone to the Plantagenets. They might have found bad examples enough, both abroad and at home, that could have shown an ancient and illustrious descent. But there is a time, when men will not suffer bad things because their ancestors have suffered worse. There is a time, when the hoary head of inveterate abuse will neither draw reverence, nor obtain protection. If the noble lord in the blue ribbon pleads, “*not guilty*,” to the charges brought against the present system of publick economy, it is not possible to give a fair verdict by which he will not stand acquitted. But pleading is not our present business. His plea or his traverse may be allowed as an answer to a charge, when a charge is made. But if he puts himself in the way to obstruct reformation, then the faults of his office instantly become his own. Instead of a publick officer in an abusive department, whose province is an object to be regulated, he becomes a criminal who is to be punished. I do most seriously put it to administration, to consider the wisdom of a timely reform. Early reformations are amicable arrangements with a

friend in power. Late reformatations are terms imposed upon a conquered enemy. Early reformatations are made in cool blood: late reformatations are made under a state of inflammation. In that state of things the people behold in government nothing that is respectable. They see the abuse, and they will see nothing else—they fall into the temper of a furious populace, provoked at the disorder of a house of ill fame; they never attempt to correct or regulate; they go to work by the shortest way—they abate the nuisance—they pull down the house.

This is my opinion with regard to the true interest of government. But as it is the interest of government that reformation should be early, it is the interest of the people that it should be temperate. It is their interest, because a temperate reform is permanent; and because it has a principle of growth. Whenever we improve, it is right to leave room for a further improvement. It is right to consider, to look about us, to examine the effect of what we have done.—Then we can proceed with confidence, because we can proceed with intelligence.—Whereas in hot reformatations, in what men, more zealous than considerate, call *making clear work*, the whole is generally so crude, so harsh, so indigested; mixed with so much imprudence, and so much injustice; so contrary to the whole course of human nature and human institutions, that the very people who are most eager for it, are among the first to grow disgusted at what they have done. Then some part of the abdicated grievance is recalled from its exile, in order to become a corrective of the correction. Then the abuse assumes all the credit and popularity of a reform. The very idea of purity and disinterestedness in politics falls into disrepute, and is considered as a vision of hot and inexperienced men; and thus disorders become incurable, not by the virulence of their own quality, but by the unapt and violent nature of the remedies. A great part, therefore, of my idea of reform is meant to operate gradually; some benefits will come at a nearer, some at a more remote period.

We must no more make haste to be rich by perimony, than by intemperate acquisition.

I am therefore satisfied to act as a fair mediator between government and the people, endeavouring to form a plan which should have both an early and a temperate operation. I mean, that it should be substantial; that it should be systematick. That it should rather strike at the first cause of prodigality and corrupt influence, than attempt to follow them in all their effects.

It was to fulfil the first of these objects (the proposal of something substantial) that I found myself obliged, at the outset, to reject a plan proposed by an honourable gentleman and attentive member of parliament,\* with very good intentions on his part, about a year or two ago. Sir, the plan I speak of was the tax of 25 *per cent.* moved upon places and pensions during the continuance of the American war.—Nothing, sir, could have met my ideas more than such a tax, if it was considered as a practical satire on that war, and as a penalty upon those who led us into it; but in any other view it appeared to me very liable to objections. I considered the scheme as neither substantial, nor permanent, nor systematical, nor likely to be a corrective of evil influence. I have always thought employments a very proper subject of regulation; but a very ill chosen subject for a tax. An equal tax upon property is reasonable, because the object is of the same quality throughout. The species is the same—it differs only in its quantity: but a tax upon salaries is totally of a different nature; there can be no equality, and consequently no justice, in taxing them by the hundred, in the gross.

We have, sir, on our establishment, several offices which perform real service.—We have also places that provide large rewards for no service at all. We have stations which are made for the publick decorum; made for preserving the grace and majesty of a great people. We have likewise expensive formali-

\* Thomas Gilbert, Esq. member for Litchfield.

ties, which tend rather to the disgrace than the ornament of the state and the court. This, sir, is the real condition of our establishments. To fall with the same severity on objects so perfectly dissimilar, is the very reverse of a reformation. I mean a reformation framed, as all serious things ought to be, in number, weight, and measure. Suppose, for instance, that two men receive a salary of 800*l.* a year each.—In the office of one, there is nothing at all to be done; in the other, the occupier is oppressed by its duties.—Strike off twenty-five *per cent.* from these two offices, you take from one man 200*l.* which, in justice, he ought to have, and you give in effect to the other 600*l.* which he ought not to receive. The publick robs the farmer, and the latter robs the publick; and this mode of mutual robbery is the only way in which the office and the publick can make up their accounts.

In effect, such a scheme is not calculated to produce, but to prevent reformation. It holds out a shadow of present gain to a greedy and necessitous publick, to divert their attention from these abuses, which in reality are the great causes of their wants. It is a composition to stay inquiry; it is a fine paid by mismanagement, for the renewal of its lease. What is worse, it is a fine paid by industry and merit, for an indemnity to the idle and the worthless. But I shall say no more upon this topick, because (whatever may be given out to the contrary) I know that the noble lord in the blue riband perfectly agrees with me in these sentiments.

Having thus, sir, rejected the plan of a taxation of office,—my next business was to find something which might be really substantial and effectual. I am quite clear, that if we do not go to the very origin and first ruling cause of grievances, we do nothing. What does it signify to turn abuses out of one door, if we are to let them in at another? What does it signify to promote economy upon a measure, and to suffer it to be subverted in the principle? Our ministers are far from being wholly to blame.

for the present ill order which prevails. Whilst institutions directly repugnant to good management are suffered to remain, no effectual or lasting reform *can* be introduced.

I therefore thought it necessary, as soon as I conceived thoughts of submitting to you some plan of reform, to take a comprehensive view of the state of this country ; to take a sort of survey of its jurisdictions, its estates, and its establishments. Something, in every one of them, seemed to me to stand in the way of all economy in their administration, and prevented every possibility of methodizing the system. But being, as I ought to be, doubtful of myself, I was resolved not to proceed in an *arbitrary* manner, in any particular which tended to change the settled state of things, or in any degree to affect the fortune or situation, the interest or the importance of any individual. By an arbitrary proceeding, I mean one conducted by the private opinions, tastes or feelings, of the man who attempts to regulate. These private measures are not standards of the exchequer, nor balances of the sanctuary. General principles cannot be debauched or corrupted by interest or caprice ; and by those principles I was resolved to work.

Sir, before I proceed further, I will lay these principles fairly before you, that afterwards you may be in a condition to judge whether every object of regulation, as I propose it, comes fairly under its rule. This will exceedingly shorten all discussion between us, if we are perfectly in earnest in establishing a system of good management. I therefore lay down to myself, seven fundamental rules ; they might indeed be reduced to two or three simple maxims, but they would be too general, and their application to the several heads of the business before us, would not be so distinct and so visible. I conceive, then,

First, That all jurisdictions which furnish more matter of expense, more temptation to oppression, or more means and instruments of corrupt influence, than advantage to justice or political administration, ought to be abolished.

Secondly, That all publick estates which are more subservient to the purposes of vexing, overawing, and influencing those who hold under them, and to the expense of reception and management, than of benefit to the revenue, ought, upon every principle, both of revenue and of freedom, to be disposed of.

Thirdly, That all offices which bring more charge than proportional advantage to the state; that all offices which may be engrafted on others, uniting and simplifying their duties, ought, in the first case, to be taken away; and in the second to be consolidated.

Fourthly, That all such offices ought to be abolished as obstruct the prospect of the general superintendant of finance; which destroy his superintendency, which disable him from foreseeing and providing for charges as they may occur; from preventing expense in its origin, checking it in its progress, or securing its application to its proper purposes. A minister under whom expenses can be made without his knowledge, can never say what it is that he can spend or what it is that he can save.

Fifthly, That it is proper to establish an invariable order in all payments; which will prevent partiality; which will give preference to services, not according to the importunity of the demandant, but the rank and order of their utility or their justice.

Sixthly, That it is right to reduce every establishment, and every part of an establishment (as nearly as possible) to certainty, the life of all order and good management.

Seventhly, That all subordinate treasuries, as the nurseries of mismanagement, and as naturally drawing to themselves as much money as they can, keeping it as long as they can, and accounting for it as late as they can, ought to be dissolved. They have a tendency to perplex and distract the publick accounts, and to excite a suspicion of government, even beyond the extent of their abuse.



Under the authority and with the guidance of these principles, I proceed; wishing that nothing in any establishment may be changed, where I am not able to make a strong, direct, and solid application of those principles, or of some one of them. An economical constitution is a necessary basis for an economical administration.

First, with regard to the sovereign jurisdictions, I must observe, sir, that whoever takes a view of this kingdom in a cursory manner, will imagine, that he beholds a solid, compacted, uniform system of monarchy; in which all inferior jurisdictions are but as rays diverging from one center. But on examining it more nearly, you find much eccentricity and confusion. It is not a *monarchy* in strictness. But, as in the Saxon times this country was a heptarchy, it is now a strange sort of *pentarchy*. It is divided into five several distinct principalities, besides the supreme. There is indeed this difference from the Saxon times, that as in the itinerant exhibitions of the stage, for want of a complete company, they are obliged to cast a variety of parts on their chief performer; so our sovereign condescends himself to act, not only the principal, but all the subordinate parts in the play. He condescends to dissipate the royal character, and to trifle with those light, subordinate, lathered sceptres, in those hands that sustain the ball representing the world, or which wield the trident that commands the ocean. Cross a brook, and you lose the king of England; but you have some comfort in coming again under his majesty, though "shorn of his beams," and no more than prince of Wales. Go to the north, and you find him dwindled to a duke of Lancaster; turn to the west of that north, and he pops upon you in the humble character of earl of Chester. Travel a few miles on, the earl of Chester disappears, and the king surprises you again as count palatine of Lancaster. If you travel beyond Mount Edgecombe, you find him once more in his incognito, and he is duke of Cornwall. So that, quite fatigued and satiated with this dull variety, you are infinitely refresh-

ed when you return to the sphere of his proper splendour, and behold your amiable sovereign in his true, simple, undisguised, native character of majesty.

In every one of these five principalities, datchies, palatinates, there is a regular establishment of considerable expense, and most domineering influence. As his majesty submits to appear in this state of subordination to himself; so his loyal peers and faithful commons attend his royal transformations; and are not so nice as to refuse to nibble at those crumbs of emoluments, which console their petty metamorphoses. Thus every one of these principalities has the apparatus of a kingdom, for the jurisdiction over a few private estates; and the formality and charge of the exchequer of Great Britain, for collecting the rents of a country squire. Cornwall is the best of them; but when you compare the charge with the receipt, you will find that it furnishes no exception to the general rule. The dutchy and county palatine of Lancaster do not yield, as I have reason to believe, on an average of twenty years, four thousand pounds a year clear to the crown. As to Wales, and the county palatine of Chester, I have my doubts, whether their productive exchequer yields any returns at all. Yet one may say, that this revenue is more faithfully applied to its purposes than the rest; as it exists for the sole purpose of multiplying offices, and extending influence.

An attempt was lately made to improve this branch of local influence, and to transfer it to the fund of general corruption. I have on the seat behind me, the constitution of Mr. John Probert; a knight-errant, dubbed by the noble lord in the blue riband, and sent to search for revenues and adventures upon the mountains of Wales. The commission is remarkable; and the event not less so. The commission sets forth, that "upon a report of the *deputy auditor* (for there is a deputy auditor) of the principality of Wales, it appeared, that his majesty's land revenues in the said principality, *are greatly diminished*;"—and "that upon a *report* of the *surveyor general* of his majesty's

land-revenues, upon a memorial of the auditor of his majesty's revenues *within the said principality*, that his mines and forests have produced very little profit *either to the publick revenue or to individuals*;—and therefore they appoint Mr. Probert, with a pension of three hundred pounds a year from the said principality, to try whether he can make any thing more of that very little which is stated to be so greatly diminished. “*A beggarly account of empty boxes.*” And yet, sir, you will remark—that this diminution from littleness (which serves only to prove the infinite divisibility of matter) was not for want of the tender and officious care (as we see) of surveyors general, and surveyors particular; of auditors and deputy-auditors; not for want of memorials, and remonstrances, and reports, and commissions, and constitutions, and inquisitions, and pensions.

Probert, thus armed and accoutred, and paid, proceeded on his adventure; but he was no sooner arrived on the confines of Wales, than all Wales was in arms to meet him. That nation is brave and full of spirit. Since the invasion of king Edward and the massacre of the bards, there never was such a tumult, and alarm, and uproar, through the region of *Pres-tatyn*. *Snowdon* shook to its base; *Cader Edris* was loosened from its foundations. The fury of litigious war blew her horn on the mountains. The rocks poured down their goatherds, and the deep caverns vomited out their miners. Every thing above ground, and every thing under ground, was in arms.

In short, sir, to alight from my Welch Pegasus, and to come to level ground; the *Preux Chevalier* Probert, went to look for revenue, like his masters upon other occasions; and like his masters, he found rebellion. But we were grown cautious by experience. A civil war of paper might end in a more serious war; for now remonstrance met remonstrance, and memorial was opposed to memorial. In truth, sir, the attempt was no less an affront upon the understanding of that respectable people, than it was an attack on their property. The wise Britons thought

it more reasonable, that the poor, wasted, decrepit revenue of the principality, should die a natural than a violent death. They chose that their ancient moss-grown castles should moulder into decay, under the silent touches of time, and the slow formality of an oblivious and drowsy exchequer, rather than that they should be battered down all at once, by the lively efforts of a pensioned engineer. As it is the fortune of the noble lord to whom the auspices of this campaign belonged, frequently to provoke resistance, so it is his rule and his nature to yield to that resistance in *all cases whatsoever*. He was true to himself on this occasion. He submitted with spirit to the spirited remonstrances of the Welch. Mr. Probert gave up his adventure, and keeps his pension—and so ends “the famous history of the revenue adventures of the bold baron North, and the good knight Probert, upon the mountains of Venodotia.”

In such a state is the exchequer of Wales at present, that, upon the report of the treasury itself, its *little revenue is greatly* diminished; and we see by the whole of this strange transaction, that an attempt to improve it produces resistance; the resistance produces submission; and the whole ends in pension.

It is nearly the same with the revenues of the dutchy of Lancaster. To do nothing with them is extinction; to improve them is oppression. Indeed, the whole of the estates which support these principalities, is made up, not of revenues and rents and profitable fines, but of claims, of pretensions, of vexations, of litigations. They are exchequers of unfrequent receipt, and constant charge; a system of finance not fit for an economist who would be rich; not fit for a prince who would govern his subjects with equity and justice.

It is not only between prince and subject, that these mock jurisdictions, and mimic revenues, produce great mischief. They excite among the people a spirit of informing and delating; a spirit of supplanting and undermining one another. So that many in such circumstances, conceive it advantageous to them

rather to continue subject to vexation themselves, than to give up the means and chance of vexing others. It is exceedingly common for men to contract their love to their country into an attachment to its petty subdivisions; and they sometimes even cling to their provincial abuses, as if they were franchises, and local privileges. Accordingly, in places where there is much of this kind of estate, persons will be always found, who would rather trust to their talents in recommending themselves to power for the renewal of their interests, than incur their purses, though never so lightly, in order to transmit independence to their posterity. It is a great mistake, that the desire of securing property is universal among mankind. Gaming is a principle inherent in human nature. It belongs to us all, I would therefore break those tables; I would furnish no evil occupation for that spirit. I would make every man look every where, except to the intrigue of a court, for the improvement of his circumstances, or the security of his fortune. I have in my eye a very strong case in the dutchy of Lancaster (which lately occupied Westminster-hall and the house of lords) as my voucher for many of these reflections.\*

For what plausible reason are these principalities suffered to exist? When a government is rendered complex (which in itself is no desirable thing) it ought to be for some political end, which cannot be answered otherwise. Subdivisions in government are only admissible in favour of the dignity of inferior princes, and high nobility; or for the support of an aristocratick confederacy under some head; or for the conservation of the franchises of the people in some privileged province. Such, for the two former of these ends, are the subdivisions in favour of the electoral, and other princes in the empire: for the latter of these purposes, are the jurisdictions of the imperial cities, and the Hanse towns. For the latter

\* Case of Richard Lee, Esq. Appellant, against George Venables Lord Vernon, Respondent, in the year 1776.

of these ends, are also the countries of the states (*Pays d'Etats*) and certain cities and orders in France. These are all regulations with an object, and some of them with a very good object. But how are the principles of any of these subdivisions applicable to the case before us?

Do they answer any purpose to the king? The principality of Wales was given by patent to Edward the Black Prince, on the ground on which it has stood ever since.—Lord Coke sagaciously observes upon it, “that in the charter of creating the Black Prince Edward prince of Wales, there is a *great mystery*—for *less* than an estate of inheritance, so *great* a prince *could* not have, and an *absolute estate of inheritance* in so *great* a principality as Wales (this principality being so dear to him) he *should* not have; and therefore it was made, *sibi et heredibus suis regibus Angliæ*, that by his decease, or attaining to the crown, it might be extinguished in the crown.”

For the sake of this foolish *mystery*, of what a great prince *could* not have *less*, and *should* not have so *much*, of a principality which was too *dear* to be given, and too *great* to be kept—and for no other cause, that ever I could find—this form and shadow of a principality without any substance, has been maintained. That you may judge in this instance (and it serves for the rest) of the difference between a great and a little economy, you will please to recollect, sir, that Wales may be about the tenth part of England in size and population; and certainly not a hundredth part in opulence. Twelve judges perform the whole of the business, both of the stationary and the itinerant justice of this kingdom; but for Wales, there are eight judges. There is in Wales an exchequer, as well as in all the dutchies, according to the very best and most authentick absurdity of form. There are in all of them, a hundred more difficult trifles and laborious fooleries, which serve no other purpose than to keep alive corrupt hope and servile dependance.

These principalities are so far from contributing to the ease of the king, to his wealth, or his dignity, that

they render both his supreme and his subordinate authority, perfectly ridiculous. It was but the other day, that that pert factious fellow, the duke of Lancaster, presumed to fly in the face of his leige lord, our gracious sovereign; and *associating* with a parcel of lawyers as factious as himself, to the destruction of *all law and order*, and in *committees leading directly to rebellion*—presumed to go to law with the king. The object is neither your business, nor mine. Which of the parties got the better, I really forget. I think it was, as it ought to be, the king. The material point is, that the suit cost about fifteen thousand pounds. But as the duke of Lancaster is but a sort of *duke Humphrey*, and not worth a groat, our sovereign was obliged to pay the costs of both. Indeed, this art of converting a great monarch into a little prince, this royal masquerading, is a very dangerous and expensive amusement, and one of the king's *menus plaisirs*, which ought to be reformed. This dutchy, which is not worth four thousand pounds a year at best, to *revenue*, is worth forty or fifty thousand to *influence*.

The dutchy of Lancaster, and the county palatine of Lancaster, answered, I admit, some purpose in their original creation. They tended to make a subject imitate a prince. When Henry the Fourth from that stair ascended the throne, high minded as he was, he was not willing to kick away the ladder. To prevent that principality from being extinguished in the crown, he severed it by act of parliament. He had a motive, such as it was; he thought his title to the crown unsound, and his possession insecure. He therefore managed a retreat in his dutchy; which lord Coke calls (I do not know why) *par multis regnis*. He flattered himself that it was practicable to make a projecting point half way down, to break his fall from the precipice of royalty; as if it were possible for one who had lost a kingdom to keep any thing else. However, it is evident that he thought so. When Henry the Fifth united, by act of parliament, the estates of his mother to the dutchy, he had the same

predilection with his father to the root of his family honours, and the same policy in enlarging the sphere of a possible retreat from the slippery royalty of the two great crowns he held. All this was changed by Edward the Fourth. He had no such family partialities, and his policy was the reverse of that of Henry the Fourth and Henry the Fifth. He accordingly again united the dutchy of Lancaster to the crown. But when Henry the Seventh, who chose to consider himself as of the house of Lancaster, came to the throne, he brought with him the old pretensions, and the old politicks of that house. A new act of parliament, a second time, dissevered the dutchy of Lancaster from the crown; and in that line things continued until the subversion of the monarchy, when principalities and powers fell along with the throne. The dutchy of Lancaster must have been extinguished, if Cromwell, who began to form ideas of aggrandizing his house, and raising the several branches of it, had not caused the dutchy to be again separated from the commonwealth, by an act of the parliament of those times.

What partiality, what objects of the politicks of the house of Lancaster, or of Cromwell, has his present majesty, or his majesty's family? What power have they within any of these principalities, which they have not within their kingdom? In what manner is the dignity of the nobility concerned in these principalities? What rights have the subject there, which they have not at least equally in every other part of the nation? These distinctions exist for no good end to the king, to the nobility, or to the people. They ought not to exist at all. If the crown (contrary to its nature, but most conformably to the whole tenour of the advice that has been lately given) should so far forget its dignity, as to contend, that these jurisdictions and revenues are estates of private property, I am rather for acting as if that groundless claim were of some weight, than for giving up that essential part of the reform. I would value the clear income, and



give a clear annuity to the crown, taken on the ~~medium~~ produce for twenty years.

If the crown has any favourite name or title, if the subject has any matter of local accommodation within any of these jurisdictions, it is meant to preserve them; and to improve them, if any improvement can be suggested. As to the crown reversions or titles upon the property of the people there, it is proposed to convert them from a snare to their independence, into a relief from their burthens. I propose, therefore to unite all the five principalities to the crown, and to its ordinary jurisdiction; to abolish all those offices that produce a useless and chargeable separation from the body of the people; to compensate those who do not hold their offices (if any such there are) at the pleasure of the crown; to extinguish vexatious titles by an act of short limitation; to sell those unprofitable estates which support useless jurisdictions; and to turn the tenant right into a fee, on such moderate terms as will be better for the state than its present right, and which it is impossible for any rational tenant to refuse.

As to the dutchies, their judicial economy may be provided for without charge. They have only to fall of course into the common county administration. A commission more or less made or omitted, settles the matter fully. As to Wales, it has been proposed to add a judge to the several courts of Westminster-hall; and it has been considered as an improvement in itself. For my part I cannot pretend to speak upon it with clearness or with decision; but certainly this arrangement would be more than sufficient for Wales. My original thought was to suppress five of the eight judges, and to leave the chief justice of Chester, with the two senior judges; and, to facilitate the business, to throw the twelve counties into six districts, holding the sessions alternately in the counties of which each district shall be composed. But on this I shall be more clear when I come to the particular bill.

Sir, the house will now see whether, in praying for judgment against the minor principalities, I do not act in conformity to the laws that I had laid down to myself, of getting rid of every jurisdiction more subservient to oppression and expense, than to any end of justice or honest policy; of abolishing offices more expensive than useful; of combining duties improperly separated; of changing revenues more vexatious than productive, into ready money; of suppressing offices which stand in the way of economy; and of cutting off lurking subordinate treasuries. Dispute the rules; controvert the application; or give your hands to this salutary measure.

Most of the same rules will be found applicable to my second object—the *landed estate of the crown*. A landed estate is certainly the very worst which the crown can possess. All minute and dispersed possessions, possessions that are often of indeterminate value, and which require a continued personal attendance, are of a nature more proper for private management, than publick administration. They are fitter for the care of a frugal land steward, than of an office in the state. Whatever they may possibly have been in other times, or in other countries, they are not of magnitude enough with us to occupy a publick department, nor to provide for a publick object. They are already given up to parliament, and the gift is not of great value. Common prudence dictates, even in the management of private affairs, that all dispersed and chargeable estates, should be sacrificed to the relief of estates more compact and better circumstanced.

As to the *forest lands*, in which the crown has (where they are not granted or prescriptively held) the *dominion of the soil*, and the *vert and venison*; that is to say, the timber and the game, and in which the people have a variety of rights, in common of herbage, and other commons, according to the usage of the several forests;—I propose to have those rights of the crown valued, as manerial rights are valued on an enclosure, and a defined portion of land to be given

for them; which land is to be sold for the publick benefit.

As to the timber, I propose a survey of the whole. What is useless for the naval purposes of the kingdom, I would condemn, and dispose of for the security of what may be useful; and to enclose such parts as may be most fit to furnish a perpetual supply; wholly extinguishing, for a very obvious reason, all right of *venison* in those parts.

I believe, sir, it will hardly be necessary for me to add, that in this sale of the landed estate of the crown I naturally except all the houses, gardens, and parks belonging to the crown, and such one forest as shall be chosen by his majesty, as best accommodated to his pleasures.

By means of this part of the reform, will fall the expensive office of *surveyor general*, with all the influence that attends it. By this, will fall *two chief justices in Eyre*, with all their train of dependants. You need be under no apprehension, sir, that your office ~~is~~ to be touched in its emoluments. They are yours by law; and they are but a moderate part of the compensation which is given to you for the ability with which you execute an office of quite another sort of importance: it is far from overpaying your diligence; or more than sufficient for sustaining the high rank you stand in, as the first gentleman of England. As to the duties of your chief justiceship, they are very different from those for which you have received the office. Your dignity is too high for a jurisdiction over wild beasts; and your learning and talents too valuable to be wasted as chief justice of a desert. I cannot reconcile it to myself, that you, sir, should be stuck up as a useless piece of antiquity.

I have now disposed of the unprofitable landed estates of the crown, and thrown them into the mass of private property; by which they will come, through the course of circulation, and through the political secretions of the state, into our better understood and better ordered revenues.

I come next to the great supreme body of the civil government itself. I approach it with that awe and

reverence with which a young physician approaches to the cure of the disorders of his parent. Disorders, sir, and infirmities, there are—such disorders, that all attempts towards method, prudence, and frugality, will be perfectly vain, whilst a system of confusion remains, which is not only alien but adverse to all economy; a system, which is not only prodigal in its very essence, but causes every thing else which belongs to it to be prodigally conducted.

It is impossible, sir, for any person to be an economist where no order in payments is established; it is impossible for a man to be an economist, who is not able to take a comparative view of his means, and of his expenses, for the year which lies before him; it is impossible for a man to be an economist, under whom various officers in their several departments may spend, even just what they please,—and often with an emulation of expense, as contributing to the importance, if not profit, of their several departments.—Thus much is certain; that neither the present, nor any other first lord of the treasury, has been ever able to take a survey, or to make even a tolerable guess, of the expenses of government for any one year; so as to enable him with the least degree of certainty, or even probability, to bring his affairs within compass. Whatever scheme may be formed upon them, must be made on a calculation of chances. As things are circumstanced, the first lord of the treasury cannot make an estimate. I am sure I serve the king, and I am sure I assist administration, by putting economy at least in their power. We must *class services*; we must, as far as their nature admits, *appropriate funds*; or every thing, however reformed, will fall again into the old confusion.

Coming upon this ground of the civil list, the first thing in dignity and charge that attracts our notice, is the *royal household*. This establishment, in my opinion, is exceedingly abusive in its constitution. It is formed upon manners and customs, that have long since expired. In the first place, it is formed,

in many respects, upon *feudal principles*. In the feudal times, it was not uncommon, even among subjects, for the lowest offices to be held by considerable persons; persons, as unfit by their incapacity, as improper from their rank, to occupy such employments. They were held by patent, sometimes for life, and sometimes by inheritance. If my memory does not deceive me, a person of no slight consideration held the office of patent hereditary cook to an earl of Warwick.—The earl of Warwick's soups, I fear, were not the better for the dignity of his kitchen. I think it was an earl of Gloucester, who officiated as steward of the household to the archbishops of Canterbury. Instances of the same kind may in some degree be found in the Northumberland house-book, and other family records. There was some reason in ancient necessities, for these ancient customs. Protection was wanted; and the domestic tie, though not the highest, was the closest.

The king's household has not only several strong traces of this *feudality*, but it is formed also upon the principles of a *body corporate*. It has its own magistrates, courts, and by-laws. This might be necessary in the ancient times, in order to have a government within itself, capable of regulating the vast and often unruly multitude which composed and attended it. This was the origin of the ancient court called the *green cloth*, composed of the marshal, treasurer, and other great officers of the household, with certain clerks. The rich subjects of the kingdom, who had formerly the same establishments (only on a reduced scale) have since altered their economy; and turned the course of their expense, from the maintenance of vast establishments within their walls, to the employment of a great variety of independent trades abroad. Their influence is lessened; but a mode of accommodation and a style of splendour, suited to the manners of the times, has been increased. Royalty itself has insensibly followed; and the royal household has been carried away by the resistless tide of manners; but with this very material difference.—Private men have

got rid of the establishments along with the reasons of them ; whereas the royal household has lost all that was stately and venerable in the antique manners, without retrenching any thing of the cumbrous charge of a Gothick establishment. It is shrunk into the polished littleness of modern elegance and personal accommodation. It has evaporated from the gross concrete, into an essence and rectified spirit of expence, where you have tuns of ancient pomp in a vial of modern luxury.

But when the reason of old establishments is gone, it is absurd to preserve nothing but the burthen of them. This is superstitiously to embalm a carcase not worth an ounce of the gums that are used to preserve it. It is to burn precious oils in the tomb ; it is to offer meat and drink to the dead,—not so much an honour to the deceased, as a disgrace to the survivors. Our palaces are vast inhospitable halls. There the bleak winds, there “Boreas, and Eurus, and Caurus, and Argestes loud,” howling through the vacant lobbies, and clattering the doors of deserted guard rooms, appal the imagination, and conjure up the grim spectres of departed tyrants—the Saxon, the Norman, and the Dane ; the stern Edwards and fierce Henrys—who stalk from desolation to desolation, through the dreary vacuity, and melancholy succession of chill and comfortless chambers. When this tumult subsides, a dead, and still more frightful silence would reign in this desert, if every now and then the tacking of hammers did not announce, that those constant attendants upon all courts, in all ages, jobs, were still alive ; for whose sake alone it is, that any trace of ancient grandeur is suffered to remain. These palaces are a true emblem of some governments ; the inhabitants are decayed, but the governours and magistrates still flourish. They put me in mind of *Old Sarum*, where the representatives, more in number than the constituents, only serve to inform us, that this was once a place of trade, and sounding with “the busy hum of men,” though now you can only trace the streets by the colour of the

corn; and its sole manufacture is in members of parliament.

These old establishments were formed also on a third principle, still more adverse to the living economy of the age. They were formed, sir, on the principle of *purveyance*, and *receipt in kind*. In former days, when the household was vast, and the supply scanty and precarious, the royal purveyors, sallying forth from under the Gothick portcullis, to purchase provision with power and prerogative, instead of money, brought home the plunder of a hundred markets, and all that could be seized from a flying and hiding country, and deposited their spoil in a hundred caverns, with each its keeper. There, every commodity, received in its rawest condition, went through all the processes which fitted it for use. This inconvenient receipt produced an economy suited only to itself. It multiplied offices beyond all measure; buttery, pantry, and all that rabble of places, which, though profitable to the holders and expensive to the state, are almost too mean to mention.

All this might be, and I believe was necessary at first; for it is remarkable, that *purveyance*, after its regulation had been the subject of a long line of statutes (not fewer, I think, than twenty-six) was wholly taken away by the twelfth of Charles the Second; yet in the next year of the same reign, it was found necessary to revive it by a special act of parliament, for the sake of the king's journeys. This, sir, is curious; and what would hardly be expected in so reduced a court as that of Charles the Second, and in so improved a country as England might then be thought. But so it was. In our time, one well filled and well covered stage coach, requires more accommodation than a royal progress; and every district, at an hour's warning, can supply an army.

I do not say, sir, that all these establishments, whose principle is gone, have been systematically kept up for influence solely: neglect had its share. But this I am sure of, that a consideration of influence has hindered any one from attempting to pull them down.

For the purposes of influence, and for those purposes only, are retained half at least of the household establishments. No revenue, no, not a royal revenue, can exist under the accumulated charge of ancient establishment, modern luxury, and parliamentary political corruption.

If therefore we aim at regulating this household, the question will be, whether we ought to economize by detail, or by principle? The example we have had of the success of an attempt to economize by detail, and under establishments adverse to the attempt, may tend to decide this question.

At the beginning of his majesty's reign, lord Talbot came to the administration of a great department in the household. I believe no man ever entered into his majesty's service, or into the service of any prince, with a more clear integrity, or with more zeal and affection for the interest of his master; and I must add, with abilities for a still higher service. Economy was then announced as a maxim of the reign. This noble lord, therefore, made several attempts towards a reform. In the year 1777, when the king's civil list debts came last to be paid, he explained very fully the success of his undertaking. He told the house of lords, that he had attempted to reduce the charges of the king's tables, and his kitchen.—The thing, sir, was not below him. He knew, that there is nothing interesting in the concerns of men, whom we love and honour, that is beneath our attention.—“Love,” says one of our old poets, “esteems no office mean;” and with still more spirit, “Entire affection scorneth nicer hands.” Frugality, sir, is founded on the principle, that all riches have limits. A royal household, grown enormous, even in the meanest department, may weaken and perhaps destroy all energy in the highest offices of the state. The gorging a royal kitchen may stint and famish the negotiations of a kingdom. Therefore, the object was worthy of his, was worthy of any man's attention. In consequence of this noble lord's resolution (as he told the other house) he reduced several tables,



and put the persons entitled to them upon board wages, much to their own satisfaction. But unluckily, subsequent duties requiring constant attendance, it was not possible to prevent their being fed where they were employed—and thus this first step towards economy doubled the expense.

There was another disaster far more doleful than this. I shall state it, as the cause of that misfortune lies at the bottom of almost all our prodigality. Lord Talbot attempted to reform the kitchen; but such, as he well observed, is the consequence of having duty done by one person whilst another enjoys the emoluments, that he found himself frustrated in all his designs. On that rock his whole adventure split—his whole scheme of economy was dashed to pieces. His department became more expensive than ever; the civil list debt accumulated—Why? It was truly from a cause, which, though perfectly adequate to the effect, one would not have instantly guessed;—It was because the *turnspit in the king's kitchen was a member of parliament*. The king's domestick servants were all undone; his tradesmen remained unpaid and became bankrupt—*because the turnspit of the king's kitchen was a member of parliament*. His majesty's slumbers were interrupted, his pillow was stuffed with thorns, and his peace of mind entirely broken—*because the king's turnspit was a member of parliament*. The judges were unpaid; the justice of the kingdom bent and gave way; the foreign ministers remained inactive and unprovided; the system of Europe was dissolved; the chain of our alliances was broken; all the wheels of government at home and abroad were stopped;—*because the king's turnspit was a member of parliament*.

Such, sir, was the situation of affairs, and such the cause of that situation, when his majesty came a second time to parliament, to desire the payment of those debts which the employment of its members in various offices, visible and invisible, had occasioned. I believe that a like fate will attend every attempt at economy by detail, under similar circumstances, and

in every department. A complex, operose office of account and control, is in itself, and even if members of parliament had nothing to do with it, the most prodigal of all things. The most audacious robberies, or the most subtle frauds, would never venture upon such a waste, as an over careful, detailed guard against them will infallibly produce. In our establishments we frequently see an office of account, of a hundred pounds a year expense, and another office, of an equal expense, to control that office, and the whole upon a matter that is not worth twenty shillings.

To avoid frittering and crumbling down the attention, by a blind unsystematick observance of every trifle, it has ever been found the best way, to do all things, which are great in the total amount, and minute in the component parts, by a *general contract*. The principles of trade have so pervaded every species of dealing, from the highest to the lowest objects; all transactions are got so much into system; that we may, at a moment's warning, and to a farthing's value, be informed at what rate any service may be supplied. No dealing is exempt from the possibility of fraud. But by a contract on a matter certain, you have this advantage—you are sure to know the utmost *extent* of the fraud to which you are subject. By a contract with a person in *his own trade*, you are sure you will not suffer by *want of skill*. By a *short* contract you are sure of making it the *interest* of the contractor to exert that skill for the satisfaction of his employers.

I mean to derogate nothing from the diligence or integrity of the present, or of any former board of green cloth. But what skill can members of parliament obtain in that low kind of province? What pleasure can they have in the execution of that kind of duty? And if they should neglect it, how does it affect their interest, when we know, that it is their vote in parliament, and not their diligence in cookery or catering, that recommends them to their office, or keeps them in it?

I therefore propose, that the king's tables (whatever number of tables, or covers to each, he shall think proper to command) should be classed by the steward of the household, and should be contracted for, according to their rank, by the head or cover ;— that the estimate and circumstance of the contract should be carried to the treasury to be approved ; and that its faithful and satisfactory performance should be reported there, previous to any payment ; that there, and there only, should the payment be made. I propose, that men should be contracted with, only in their proper trade ; and that no member of parliament should be capable of such contract. By this plan, almost all the infinite offices under the lord steward may be spared ; to the extreme simplification, and to the far better execution, of every one of his functions. The king of Prussia is so served. He is a great and eminent, though, indeed, a very rare instance of the possibility of uniting in a mind of vigour and compass, an attention to minute objects, with the largest views, and the most complicated plans. His tables are served by contract, and by the head. Let me say, that no prince can be ashamed to imitate the king of Prussia ; and particularly to learn in his school, when the problem is—"The best manner of reconciling the state of a court with the support of war." Other courts, I understand, have followed him with effect, and to their satisfaction.

The same clue of principle leads us through the labyrinth of the other departments. What, sir, is there in the office of the *great wardrobe* (which has the care of the king's furniture) that may not be executed by the *lord chamberlain* himself. He has an honourable appointment ; he has time sufficient to attend to the duty ; and he has the vice chamberlain to assist him. Why should not he deal also by contract, for all things belonging to this office, and carry his estimates first, and his report of the execution in its proper time, for payment, directly to the board of treasury itself ? By a simple operation (containing in it a treble control) the expenses of a department,

which, for naked walls, or walls hung with cobwebs, has in a few years cost the crown 150,000l, may at length hope for regulation. But, sir, the office and its business are at variance. As it stands, it serves, not to furnish the palace with its hangings, but the parliament with its dependent members.

To what end, sir, does the office of *removing wardrobe* serve at all? Why should a *jewel office* exist for the sole purpose of taxing the king's gifts of plate? Why should an office of the *robes* exist, when that of *groom of the stole* is a sinecure, and that this is a proper object of his department?

All these incumbrances, which are themselves nuisances, produce other incumbrances, and other nuisances. For the payment of these useless establishments, there are no less than *three useless treasurers*; two to hold a purse, and one to play with a stick. The treasurer of the household is a mere name. The cofferer, and the treasurer of the chamber, receive and pay great sums, which it is not at all necessary they should either receive or pay. All the proper officers, servants, and tradesmen, may be enrolled in their several departments, and paid in proper classes and times, with great simplicity and order, at the exchequer, and by direction from the treasury.

The *board of works*, which in the seven years preceding 1777, has cost towards 400,000l.\* and, if I recollect rightly, has not cost less in proportion from the beginning of the reign, is under the very same description of all the other ill contrived establishments, and calls for the very same reform. We are to seek for the visible signs of all this expense. For all this expense, we do not see a building of the size and importance of a pigeon house. Buckingham house was repaired by a bargain with the publick, for one hundred thousand pounds;—and the small house at Windsor has been, if I mistake not, undertaken since that account was brought before us. The good

\* More exactly, 378,616l. 10s. 1½d.

works of that board of works, are as carefully concealed, as other good works ought to be. They are perfectly invisible. But though it is the perfection of charity to be concealed, it is, sir, the property and glory of magnificence, to appear, and stand forward to the eye.

The *mint*, though not a department of the household, has the same vices. It is a great expense to the nation, chiefly for the sake of members of parliament. It has its officers of parade and dignity. It has its treasury too. It is a sort of corporate body; and formerly was a body of great importance; as much so, on the then scale of things, and the then order of business, as the bank is at this day. It was the great centre of money transactions, and the remittances for our own and for other nations; until king Charles the First, among other arbitrary projects, dictated by despotick necessity, made them withhold the money that lay there for remittance. That blow (and happily too) the mint never recovered. Now it is no bank—no remittance shop. The mint, sir, is a *manufacture*, and it is nothing else; and it ought to be undertaken upon the principles of a manufacture; that is, for the best and cheapest execution, by a contract, upon proper securities, and under proper regulations.

The *artillery* is a far greater object; it is a military concern; but having an affinity and kindred in its defects with the establishments I am now speaking of, I think it is best to speak of it along with them. It is, I conceive, an establishment not well suited to its martial, though exceedingly well calculated for its parliamentary purposes.—Here there is a *treasury*, as in all the other inferior departments of government. Here the military is subordinate to the civil, and the naval confounded with the land service. The object indeed is much the same in both. But when the detail is examined, it will be found that they had better be separated. For a reform of this office, I propose to restore things to what (all considerations taken together) is their natural order; to restore them to their just proportion, and to their just distribution.

I propose, in this military concern, to render the civil subordinate to the military; and this will annihilate the greatest part of the expense, and all the influence belonging to the office. I propose to send the military branch to the army, and the naval to the admiralty: and I intend to perfect and accomplish the whole detail (where it becomes too minute and complicated for legislature, and requires exact, official, military, and mechanical knowledge) by a commission of competent officers in both departments. I propose to execute by contract, what by contract can be executed, and to bring, as much as possible, all estimates to be previously approved, and finally to be paid by the treasury.

Thus, by following the course of nature, and not the purposes of politicks, or the accumulated patch-work of occasional accomodation, this vast expensive department may be methodized; its service proportioned to its necessities; and its payments subjected to the inspection of the superiour minister of finance; who is to judge of it on the result of the total collective exigencies of the state. This last is a reigning principle through my whole plan; and it is a principle which, I hope, may hereafter be applied to other plans.

By these regulations taken together—besides the three subordinate treasuries in the lesser principalities, five other subordinate treasuries are suppressed. All these arrangements together will be found to relieve the nation from a vast weight of influence, without distressing but rather by forwarding every publick service. When something of this kind is done, then the publick may begin to breathe. Under other governments, a question of expense is only a question of economy, and it is nothing more; with us, in every question of expense, there is always a mixture of constitutional considerations.

It is, sir, because I wish to keep this business of subordinate treasuries as much as I can together, that I brought the *ordnance office* before you, though it is properly a military department. For the same

reason I will now trouble you with my thoughts and propositions upon two of the greatest *under treasuries*; I mean, the office of *paymaster of the land forces*, or *treasurer of the army*; and that of the *treasurer of the navy*. The former of these has long been a great object of publick suspicion and uneasiness. Envy too has had its share in the obloquy which is cast upon this office. But I am sure that it has no share at all in the reflections I shall make upon it, or in the reformatations that I shall propose. I do not grudge to the honourable gentleman who at present holds the office, any of the effects of his talents, his merit, or his fortune. He is respectable in all these particulars. I follow the constitution of the office, without persecuting its holder. It is necessary, in all matters of publick complaint, where men frequently feel right and argue wrong, to separate prejudice from reason; and to be very sure, in attempting the redress of a grievance, that we hit upon its real seat, and its true nature. Where there is an abuse in office, the first thing that occurs in heat is to censure the officer. Our natural disposition leads all our inquiries rather to persons than to things. But this prejudice is to be corrected by maturer thinking.

Sir, the profits of the *pay office* (as an office) are not too great, in my opinion, for its duties, and for the rank of the person who has generally held it. He has been generally a person of the highest rank; that is to say, a person of eminence and consideration in this house. The great and the invidious profits of the *pay office*, are from the *bank* that is held in it. According to the present course of the office, and according to the present mode of accounting there, this bank must necessarily exist somewhere. Money is a productive thing; and when the usual time of its demand can be tolerably calculated, it may, with prudence, be safely laid out to the profit of the holder. It is on this calculation, that the business of banking proceeds. But no profit can be derived from the use of money, which does not make it the interest of the holder to delay his account. The process of the ex-

chequer colludes with this interest. Is this collusion from its want of rigour, and strictness, and great regularity of form? The reverse is true. They have in the exchequer brought rigour and formalism to their ultimate perfection. The process against accountants is so rigorous, and in a manner so unjust, that correctives must, from time to time, be applied to it. These correctives being discretionary, upon the case, and generally remitted by the barons to the lords of the treasury, as the best judges of the reasons for respite, hearings are had; delays are produced; and thus the extreme of rigour in office (as usual in all human affairs) leads to the extreme of laxity. What with the interested delay of the officer; the ill conceived exactness of the court; the applications for dispensations from that exactness; the revival of rigorous process, after the expiration of the time; and the new rigours producing new applications, and new enlargements of time, such delays happen in the public accounts, that they can scarcely ever be closed.

Besides, sir, they have a rule in the exchequer, which, I believe, they have founded upon a very ancient statute, that of the 51st of Henry III. by which is provided: "That when a sheriff or bailiff hath begun his account, none other shall be received to account, until he that was first appointed hath clearly accounted, and that the sum has been received." Whether this clause of that statute be the ground of that absurd practice, I am not quite able to ascertain. But it has very generally prevailed, though I am told that of late they have begun to relax from it. In consequence of forms adverse to substantial account, we have a long succession of pay-masters and their representatives, who have never been admitted to account, although perfectly ready to do so.

As the extent of our wars has scattered the accountants under the paymaster into every part of the globe, the grand and sure paymaster, Death, in all his shapes, calls these accountants to another reckoning. Death, indeed, domineers over every thing, but



the forms of the exchequer. Over these he has no power. They are impassive and immortal. The audit of the exchequer, more severe than the audit to which the accountants are gone, demands proofs which, in the nature of things, are difficult, sometimes impossible to be had. In this respect, too, rigour, as usual, defeats itself. Then the exchequer never gives a particular receipt, or clears a man of his account, as far as it goes. A final acquittance (or a *quietus*, as they term it) is scarcely ever to be obtained. Terrors and ghosts of unlaid accountants, haunt the houses of their children from generation to generation. Families, in the course of succession, fall into minorities; the inheritance comes into the hands of females; and very perplexed affairs are often delivered over into the hands of negligent guardians, and faithless stewards. So that the demand remains, when the advantage of the money is gone, if ever any advantage at all has been made of it. This is the cause of infinite distress to families; and becomes a source of influence to an extent, that can scarcely be imagined but by those who have taken some pains to trace it. The mildness of government in the employment of useless and dangerous powers, furnishes no reason for their continuance.

The treasurer of the navy is *mutatis mutandis*, in the same circumstances. Indeed all accountants are. Instead of the present mode, which is troublesome to the officer, and unprofitable to the publick, I propose to substitute something more effectual than rigour, which is the worst exactor in the world. I mean to remove the very temptations to delay; to facilitate the account; and to transfer this bank, now of private emolument, to the publick. The crown will suffer no wrong at least from the pay offices; and its terrors will no longer reign over the families of those who hold or have held them. I propose that these offices should be no longer *banks*, or *treasuries*, but mere *offices of administration*.—I propose, first, that the present paymaster, and the treasurer of the navy, should carry into the exchequer the whole body of

the vouchers for what they have paid over to deputy paymasters, to regimental agents, or to any of those to whom they have and ought to have paid money. I propose that those vouchers shall be admitted as actual payments in their accounts; and that the persons to whom the money has been paid, shall then stand charged in the exchequer in their place. After this process, they shall be debited or charged for nothing but the money balance that remains in their hands.

For the regulation of past accounts, I shall therefore propose such a mode, as men, temperate and prudent, make use of in the management of their private affairs, when their accounts are various, perplexed, and of long standing. I would therefore, after their example, divide the publick debts into three sorts—good, bad, and doubtful. In looking over the publick accounts, I should never dream of the blind mode of the exchequer, which regards things in the abstract, and knows no difference in the quality of its debts, or the circumstances of its debtors. By this means, it fatigues itself; it vexes others; it often crushes the poor; it lets escape the rich; or in a fit of mercy or carelessness, declines all means of recovering its just demands. Content with the eternity of its claims, it enjoys its Epicurean divinity with Epicurean languor. But it is proper that all sorts of accounts should be closed some time or other—by payment, by composition, or by oblivion. *Expedit reipublicæ ut sit finis litium.* Constantly taking along with me, that an extreme rigour is sure to arm every thing against it, and at length to relax into a supine neglect, I propose, sir, that even the best, soundest, and the most recent debts, should be put into instalments, for the mutual benefit of the accountant and the publick.

In proportion, however, as I am tender of the past, I would be provident of the future. All money that was formerly imprested to the two great *pay offices*, I would have imprested in future to the *Bank of England*. These offices should, in future, receive

no more than cash sufficient for small payments. Their other payments ought to be made by drafts on the bank, expressing the service. A check account from both offices, of drafts and receipts, should be annually made up in the exchequer, charging the bank, in account, with the cash balance, but not demanding the payment until there is an order from the treasury, in consequence of a vote of parliament.

As I did not, sir, deny to the paymaster the natural profits of the bank that was in his hands, so neither would I to the bank of England. A share of that profit might be derived to the publick in various ways. My favourite mode is this: that, in compensation for the use of this money, the bank may take upon themselves, first, *charge of the mint*; to which they are already, by their charter, obliged to bring in a great deal of bullion annually to be coined.

In the next place, I mean that they should take upon themselves the charge of *remittances to our troops abroad*. This is a species of dealing from which, by the same charter, they are not debarred. One and a quarter *per cent.* will be saved instantly thereby to the publick, on very large sums of money. This will be at once a matter of economy, and a considerable reduction of influence, by taking away a private contract of an expensive nature. If the bank, which is a great corporation, and of course receives the least profits from the money in their custody, should of itself refuse, or be persuaded to refuse, this offer upon those terms, I can speak with some confidence, that one at least, if not both parts of the condition would be received, and gratefully received, by several bankers of eminence. There is no banker who will not be at least as good security as any paymaster of the forces, or any treasurer of the navy, that have ever been bankers to the publick: as rich at least as my lord Chatham, or my lord Holland, or either of the honourable gentlemen who now hold the offices were, at the time that they entered into them; or as ever the whole establishment of the *mint* has been at any period.

These, sir, are the outlines of the plan I mean to follow, in suppressing these two large subordinate treasuries. I now come to another subordinate treasury; I mean, that of the *paymaster of the pensions*; for which purpose I re-enter the limits of the civil establishment; I departed from those limits in pursuit of a principle; and following the same game in its doubles, I am brought into those limits again. That treasury, and that office, I mean to take away; and to transfer the payment of every name, mode, and denomination of pensions, to the exchequer. The present course of diversifying the same object, can answer no good purpose; whatever its use may be to purposes of another kind. There are also other lists of pensions; and I mean that they should all be hereafter paid at one and the same place. The whole of that new consolidated list, I mean to reduce to 60,000*l.* a year, which sum I intend it shall never exceed. I think that sum will fully answer as a reward to all real merit, and a provision for all real public charity that is ever like to be placed upon the list. If any merit of an extraordinary nature should emerge, before that reduction is completed, I have left it open for an address of either house of parliament to provide for the case. To all other demands, it must be answered, with regret, but with firmness, "the publick is poor."

I do not propose to take away any pension. I know that the publick seem to call for a reduction of such of them as shall appear unmerited. As a censorial act, and punishment of an abuse, it might answer some purpose. But this can make no part of *my* plan. I mean to proceed by bill; and I cannot stop for such an inquiry. I know some gentlemen may blame me. It is with great submission to better judgments, that I recommend it to consideration; that a critical retrospective examination of the pension list, upon the principle of merit, can never serve for my basis. It cannot answer, according to my plan, any effectual purpose of economy, or of future permanent reformation. The

process, in any way, will be entangled and difficult ; and it will be infinitely slow : there is a danger that if we turn our line of march, now directed towards the grand object, into this more laborious than useful detail of operations, we shall never arrive at our end.

The king, sir, has been, by the constitution, appointed sole judge of the merit for which a pension is to be given. We have a right, undoubtedly, to canvass this, as we have to canvass every act of government. But there is a material difference between an office to be reformed, and a pension taken away for demerit. In the former case, no charge is implied against the holder ; in the latter, his character is slurred, as well as his lawful emolument affected. The former process is against the thing ; the second against the person. The pensioner certainly, if he pleases, has a right to stand on his own defence ; to plead his possession ; and to bottom his title in the competency of the crown to give him what he holds. Possessed, and on the defensive as he is, he will not be obliged to prove his special merit, in order to justify the act of legal discretion, now turned into his property, according to his tenure. The very act, he will contend, is a legal presumption, and an implication of his merit. If this be so (from the natural force of all legal presumption) he would put us to the difficult proof, that he has no merit at all. But other questions would arise in the course of such an inquiry ; that is, questions of the merit when weighed against the proportion of the reward ; then the difficulty will be much greater.

The difficulty will not, sir, I am afraid, be much less, if we pass to the person really guilty, in the question of an unmerited pension ; the minister himself. I admit, that when called to account for the execution of a trust, he might fairly be obliged to prove the affirmative, and to state the merit for which the pension is given ; though on the pensioner himself, such a process would be hard. If in this examination we proceed methodically, and so as to avoid all suspicion of partiality and prejudice, we must take

the pensions in order of time, or merely alphabetically. The very first pension to which we come, in either of these ways, may appear the most grossly unmerited of any. But the minister may very possibly show, that he knows nothing of the putting on this pension; that it was prior in time to his administration; that the minister who laid it on is dead; and then we are thrown back upon the pensioner himself, and plunged into all our former difficulties. Abuses, and gross ones, I doubt not, would appear; and to the correction of which I would readily give my hand; but when I consider that pensions have not generally been affected by the revolutions of ministry; as I know not where such inquiries would stop; and as an absence of merit is a negative and loose thing, one might be led to derange the order of families, founded on the probable continuance of their kind of income. I might hurt children; I might injure creditors. I really think it the more prudent course, not to follow the letter of the petitions. If we fix this mode of inquiry as a basis, we shall, I fear, end, as parliament has often ended under similar circumstances. There will be great delay; much confusion; much inequality in our proceedings. But what presses me most of all is this; that though we should strike off all the unmerited pensions, while the power of the crown remains unlimited, the very same undeserving persons might afterwards return to the very same list; or if they did not, other persons, meriting as little as they do, might be put upon it to an undefinable amount. This I think is the pinch of the grievance.

For these reasons, sir, I am obliged to wave this mode of proceeding as any part of my plan. In a plan of reformation, it would be one of my maxims, that when I know of an establishment which may be subservient to useful purposes, and which at the same time, from its discretionary nature, is liable to a very great perversion from those purposes, *I would limit the quantity of the power that might be so abused.* For I am sure that in all such cases, the rewards of merit will have very narrow bounds; and that partial or

corrupt favour will be infinite. This principle is not arbitrary ; but the limitation of the specifick quantity must be so in some measure. I therefore state 60,000*l.* leaving it open to the house to enlarge or contract the sum as they shall see, on examination, that the discretion I use is scanty or liberal. The whole amount of the pensions of all denominations, which have been laid before us, amount, for a period of seven years, to considerably more than 100,000*l.* To what the other lists amount, I know not. That will be seen hereafter. But from those that do appear, a saving will accrue to the publick, at one time or other, of 40,000*l.* a year, and we had better, in my opinion, let it fall in naturally, than to tear it crude and unripe from the stalk.

There is a great deal of uneasiness among the people, upon an article which I must class under the head of pensions. I mean the *great patent offices in the Exchequer*. They are in reality and substance no other than pensions, and in no other light shall I consider them. They are sinecures. They are always executed by deputy. The duty of the principal is as nothing. They differ, however, from the pensions on the list, in some particulars. They are held for life. I think with the publick, that the profits of those places are grown enormous ; the magnitude of those profits, and the nature of them, both call for reformation. The nature of their profits, which grow out of the publick distress, is itself invidious and grievous. But I fear that reform cannot be immediate. I find myself under a restriction. These places, and others of the same kind, which are held for life, have been considered as property. They have been given as a provision for children ; they have been the subject of family settlements ; they have been the security of creditors. What the law respects shall be sacred to me. If the barriers of law should be broken down, upon ideas of convenience, even of publick convenience, we shall have no longer any thing certain among us. If the discretion of power is once let loose upon property, we can be at no loss to

determine whose power, and what discretion it is that will prevail at last. It would be wise to attend upon the order of things; and not to attempt to outrun the slow, but smooth and even course of nature. There are occasions, I admit, of publick necessity, so vast, so clear, so evident, that they supercede all laws. Law being only made for the benefit of the community, cannot in any one of its parts, resist a demand which may comprehend the total of the publick interest. To be sure, no law can set itself up against the cause and reason of all law. But such a case very rarely happens; and this most certainly is not such a case. The mere time of the reform is by no means worth the sacrifice of a principle of law. Individuals pass like shadows; but the commonwealth is fixed and stable. The difference therefore of to day and to morrow, which to private people is immense, to the state is nothing. At any rate it is better, if possible, to reconcile our economy with our laws, than to set them at variance—a quarrel, which in the end must be destructive to both.

My idea, therefore, is to reduce those offices to fixed salaries, as the present lives and reversions shall successively fall. I mean, that the office of the great auditor (the auditor of the receipt) shall be reduced to 3,000*l.* a year; and the auditors of the imprest and the rest of the principal officers, to fixed appointments of 1,500*l.* a year each. It will not be difficult to calculate the value of this fall of lives to the publick, when we shall have obtained a just account of the present income of those places; and we shall obtain that account with great facility, if the present possessors are not alarmed with any apprehension of danger to their freehold office.

I know too, that it will be demanded of me, how it comes, that since I admit these offices to be no better than pensions, I chose, after the principle of law had been satisfied, to retain them at all? To this, sir, I answer, that conceiving it to be a fundamental part of the constitution of this country, and of the reason



of state in every country, that there must be means of rewarding publick service, those means will be incomplete, and, indeed, wholly insufficient for that purpose, if there should be no further reward for that service, than the daily wages it receives during the pleasure of the crown.

Whoever seriously considers the excellent argument of lord Somers, in the banker's case, will see he bottoms himself upon the very same maxim which I do; and one of his principal grounds of doctrine for the alienability of the domain in England\* contrary to the maxim of the law in France, he lays in the constitutional policy, of furnishing a permanent reward to publick service; of making that reward the origin of families; and the foundation of wealth as well as of honour. It is, indeed, the only genuine unadulterated origin of nobility. It is a great principle in government; a principle at the very foundation of the whole structure. The other judges who held the same doctrine, went beyond lord Somers with regard to the remedy, which they thought was given by law against the crown, upon the grant of pensions. Indeed no man knows, when he cuts off the incitements to a virtuous ambition, and the just rewards of publick service, what infinite mischief he may do his country, through all generations. Such saving to the publick may prove the worst mode of robbing it. The crown, which has in its hands the trust of the daily pay for national service, ought to have in its hands also the means for the repose of publick labour, and the fixed settlement of acknowledged merit. There is a time, when the weather beaten vessels of the state ought to come into harbour. They must at length have a retreat from the malice of rivals, from the perfidy of political friends, and the inconstancy of the people. Many of the persons, who in all times have filled the great offices of state, have been younger brothers, who had originally little, if any fortune. These

\* Before the statute of Queen Anne, which limited the alienation of land.

offices do not furnish the means of amassing wealth. There ought to be some power in the crown of granting pensions out of the reach of its own caprices. An entail of dependence is a bad reward of merit.

I would therefore leave to the crown the possibility of conferring some favours, which, whilst they are received as a reward, do not operate as corruption. When men receive obligations from the crown through the pious hands of fathers, or of connexions as venerable as the paternal, the dependences which arise from thence, are the obligations of gratitude, and not the fetters of servility. Such ties originate in virtue, and they promote it. They continue men in those habitudes of friendship, those political connexions, and those political principles in which they began life. They are antidotes against a corrupt levity, instead of causes of it. What an unseemly spectacle would it afford, what a disgrace would it be to the commonwealth that suffered such things, to see the hopeful son of a meritorious minister begging his bread at the door of that treasury, from whence his father dispensed the economy of an empire, and promoted the happiness and glory of his country! Why should he be obliged to prostrate his honour, and to submit his principles at the levee of some proud favourite, shouldered and thrust aside by every impudent pretender, on the very spot, where, a few days before he saw himself adored?—obliged to cringe to the author of the calamities of his house, and to kiss the hands that are red with his father's blood?—No, sir,—these things are unfit—they are intolerable.

Sir, I shall be asked, why I do not choose to destroy those offices which are pensions, and appoint pensions under the direct title in their stead? I allow, that in some cases it leads to abuse, to have things appointed for one purpose, and applied to another. I have no great objection to such a change: but I do not think it quite prudent for me to propose it. If I should take away the present establishment, the burthen of proof rests upon me, that so many pensions, and to such an amount each,

and no more, are necessary for the publick service. This is what I can never prove; for it is a thing impalpable of definition. I do not like to take away an object that I think answers my purpose, in hopes of getting it back again in a better shape. People will bear an old establishment, when its excess is corrected, who will revolt at a new one. I do not think these office pensions to be more in number than sufficient; but on that point the house will exercise its discretion. As to abuse, I am convinced, that very few trusts in the ordinary course of administration, have admitted less abuse than this. Efficient ministers have been their own paymasters. It is true. But their very partiality has operated as a kind of justice; and still it was service that was paid. When we look over this exchequer list, we find it filled with the descendants of the Walpoles, of the Pelhams, of the Townshends; names to whom this country owes its liberties, and to whom his majesty owes his crown. It was in one of these lines, that the immense and envied employment he now holds, came to a certain duke,\* who is now probably sitting quietly at a very good dinner, directly under us; and acting *high life below stairs*, whilst we his masters, are filling our mouths with unsubstantial sounds, and talking of hungry economy over his head. But he is the elder branch of an ancient and decayed house, joined to, and repaired by the reward of services done by another. I respect the original title, and the first purchase of merited wealth and honour, through all its descents, through all its transfers, and all its assignments. May such fountains never be dried up! May they ever flow with their original purity, and refresh and fructify the commonwealth, for ages!

Sir, I think myself bound to give you my reasons as clearly, and as fully, for stopping in the course of reformation, as for proceeding in it. My limits are the rules of law; the rules of policy; and the service of the state. This is the reason why I am not able to

\* Duke of Newcastle, whose dining room is under the House of Commons.

intermeddle with another article, which seems to be a specifick object in several of the petitions; I mean the reduction of exorbitant emoluments to efficient offices. If I knew of any real efficient office, which did possess exorbitant emoluments, I should be extremely desirous of reducing them. Others may know of them. I do not. I am not possessed of an exact common measure between real service and its reward. I am very sure, that states do sometimes receive services, which it is hardly in their power to reward according to their worth. If I were to give my judgment with regard to this country, I do not think the great efficient offices of the state to be overpaid. The service of the publick is a thing which cannot be put to auction, and struck down to those who will agree to execute it the cheapest. When the proportion between reward and service is our object, we must always consider of what nature the service is, and what sort of men they are that must perform it. What is just payment for one kind of labour, and full encouragement for one kind of talents, is fraud and discouragement to others. Many of the great offices have much duty to do, and much expense of representation to maintain. A secretary of state, for instance, must not appear sordid in the eyes of the ministers of other nations; neither ought our ministers abroad to appear contemptible in the courts where they reside. In all offices of duty, there is, almost necessarily, a great neglect of all domestick affairs. A person in high office can rarely take a view of his family house. If he sees that the state takes no detriment, the state must see that his affairs should take as little.

I will even go so far as to affirm, that if men were willing to serve in such situations without salary, they ought not to be permitted to do it. Ordinary service must be secured by the motives to ordinary integrity. I do not hesitate to say that that state which lays its foundation in rare and heroick virtues, will be sure to have its superstructure in the basest profligacy and corruption. An honourable and fair profit is the best

security against avarice and rapacity; as in all things else, a lawful and regulated enjoyment is the best security against debauchery and excess. For as wealth is power, so all power will infallibly draw wealth to itself by some means or other: and when men are left no way of ascertaining their profits but by their means of obtaining them, those means will be increased to infinity. This is true in all the parts of administration, as well as in the whole. If any individual were to decline his appointments, it might give an unfair advantage to ostentatious ambition over unpretending service; it might breed invidious comparisons; it might tend to destroy whatever unity and agreement may be found among ministers. And after all, when an ambitious man had run down his competitors by a fallacious show of disinterestedness, and fixed himself in power by that means, what security is there that he would not change his course, and claim as an indemnity ten times more than he has given up?

It may be expected, sir, that when I am giving my reasons why I limit myself in the reduction of employments, or of their profits, I should say something of those which seem of eminent inutility in the state; I mean the number of officers who by their places are attendant on the person of the king. Considering the commonwealth merely as such, and considering those officers only as relative to the direct purposes of the state, I admit that they are of no use at all. But there are many things in the constitution of establishments, which appear of little value on the first view, which in a secondary and oblique manner, produce very material advantages. It was on full consideration that I determined not to lessen any of the offices of honour about the crown, in their number or their emoluments. These emoluments, except in one or two cases, do not much more than answer the charge of attendance. Men of condition naturally love to be about a court; and women of condition love it much more. But there is in all regular attendance, so much of constraint, that if it were a mere charge, without

any compensation, you would soon have the court deserted by all the nobility of the kingdom.

Sir, the most serious mischiefs would follow from such a desertion. Kings are naturally lovers of low company. They are so elevated above all the rest of mankind, that they must look upon all their subjects as on a level. They are rather apt to hate than to love their nobility, on account of the occasional resistance to their will, which will be made by their virtue, their petulance, or their pride. It must, indeed, be admitted, that many of the nobility are as perfectly willing to act the part of flatterers, tale bearers, parasites, pimps, and buffoons, as any of the lowest and vilest of mankind can possibly be. But they are not properly qualified for this object of their ambition. The want of a regular education, and early habits, and some lurking remains of their dignity, will never permit them to become a match for an Italian eunuch, a mountebank, a fidler, a player, or any regular practitioner of that tribe. The Roman emperours, almost from the beginning, threw themselves into such hands; and the mischief increased every day, till its decline, and its final ruin. It is therefore of very great importance (provided the thing is not overdone) to contrive such an establishment as must, almost whether a prince will or not, bring into daily and hourly offices about his person, a great number of his first nobility, and it is rather a useful prejudice that gives them a pride in such a servitude. Though they are not much the better for a court, a court will be much the better for them. I have therefore not attempted to reform any of the offices of honour about the king's person.

There are, indeed, two offices in his stables which are sinecures. By the change of manners, and indeed by the nature of the thing, they must be so; I mean the several keepers of buck-hounds, stag-hounds, fox-hounds, and harriers. They answer no purpose of utility, or of splendour. These I propose to abolish. It is not proper that great noblemen should be keepers of dogs, though they were the king's dogs. In every

part of my scheme, I have endeavoured that no primary, and that even no secondary service of the state, should suffer by its frugality. I mean to touch no offices but such as I am perfectly sure, are either of no use at all, or not of any use in the least assignable proportion to the burthen with which they load the revenues of the kingdom, and to the influence with which they oppress the freedom of parliamentary deliberation; for which reason there are but two offices which are properly state offices, that I have a desire to reform.

The first of them is the new office of *third secretary of state*, which is commonly called *secretary of state for the colonies*.

We know that all the correspondence of the colonies had been, until within a few years, carried on by the southern secretary of state; and that this department has not been shunned upon account of the weight of its duties; but on the contrary, much sought on account of its patronage. Indeed he must be poorly acquainted with the history of office, who does not know how very slightly the American functions have always leaned on the shoulders of the ministerial *Atlas*, who has upheld that side of the sphere. Undoubtedly, great temper and judgment were requisite in the management of the colony politicks; but the official detail was a trifle. Since the new appointment, a train of unfortunate accidents has brought before us almost the whole correspondence of this favourite secretary's office, since the first day of its establishment. I will say nothing of its auspicious foundation; of the quality of its correspondence; or of the effects that have ensued from it. I speak merely of its *quantity*; which we know would have been little or no addition to the trouble of whatever office had its hands the fullest. But what has been the real condition of the old office of secretary of state? Have their velvet bags, and their red boxes, been so full, that nothing more could possible be crammed into them?

A correspondence of a curious nature has been lately published.\* In that correspondence, sir, we find the opinion of a noble person, who is thought to be the grand, manufacturer of administrations; and therefore the best judge of the quality of his work. He was of opinion, that there was but one man of diligence and industry in the whole administration—it was the late earl of Suffolk. The noble lord lamented very justly, that this statesman, of so much mental vigour, was almost wholly disabled from the exertion of it, by his bodily infirmities. Lord Suffolk, dead to the state, long before he was dead to nature, at last paid his tribute to the common treasury to which we must all be taxed. But so little want was found even of his intentional industry, that the office, vacant in reality to its duties long before, continued vacant even in nomination and appointment for a year after his death. The whole of the laborious and arduous correspondence of this empire, rested solely upon the activity and energy of lord Weymouth.

It is therefore demonstrable, since one diligent man was fully equal to the duties of the two offices, that two diligent men will be equal to the duty of three. The business of the new office which I shall propose to you to suppress, is by no means too much to be returned to either of the secretaries which remain. If this dust in the balance should be thought too heavy, it may be divided between them both; North America (whether free or reduced) to the northern secretary, the West Indies to the southern. It is not necessary that I should say more upon the inutility of this office. It is burning day light. But before I have done, I shall just remark, that the history of this office is too recent to suffer us to regret, that it was made for the mere convenience of the arrangements of political intrigue, and not for the service of the state; that it was made, in order to give a colour to an exorbitant increase of the civil list; and in the

\* Letters between Dr. Addington and sir James Wright.



same act to bring a new accession to the loaded compost heap of corrupt influence.

There is, sir, another office, which was not long since closely connected with this of the American secretary; but has been lately separated from it for the very same purpose for which it had been conjoined; I mean, the sole purpose of all the separations and all the conjunctions that have been lately made—a job.—I speak, sir, of the *board of trade and plantations*. This board is a sort of temperate bed of influence; a sort of gently ripening hot house, where eight members of parliament receive salaries of a thousand a year, for a certain given time, in order to mature at a proper season, a claim to two thousand, granted for doing less, and on the credit of having toiled so long in that inferiour laborious department.

I have known that board, off and on, for a great number of years. Both of its pretended objects have been much the objects of my study, if I have a right to call any pursuits of mine by so respectable a name. I can assure the house, and I hope they will not think that I risk my little credit lightly, that, without meaning to convey the least reflection upon any one of its members past or present,—it is a board which, if not mischievous, is of no use at all.

You will be convinced, sir, that I am not mistaken, if you reflect how generally it is true, that commerce, the principal object of that office, flourishes most when it is left to itself. Interest, the great guide of commerce, is not a blind one. It is very well able to find its own way; and its necessities are its best laws. But if it were possible in the nature of things, that the young should direct the old, and the inexperienced instruct the knowing; if a board in the state was the best tutor for the counting house; if the desk ought to read lectures to the anvil, and the pen to usurp the place of the shuttle—yet in any matter of regulation, we know that board must act with as little authority as skill. The prerogative of the crown is utterly inadequate to its object; because all regulations are, in their nature, restrictive of some liberty.

In the reign, indeed, of Charles the first, the council, or committees of council, were never a moment unoccupied with affairs of trade. But even where they had no ill intention, (which was sometimes the case) trade and manufacture suffered infinitely from their injudicious tampering. But since that period, whenever regulation is wanting (for I do not deny, that sometimes it may be wanting) parliament constantly sits; and parliament alone is competent to such regulation. We want no instruction from boards of trade, or from any other board; and God forbid we should give the least attention to their reports. Parliamentary inquiry is the only mode of obtaining parliamentary information. There is more real knowledge to be obtained, by attending the detail of business in the committees above stairs, than ever did come, or ever will come from any board in this kingdom, or from all of them together. An assiduous member of parliament will not be the worse instructed there, for not being paid a thousand a year for learning his lesson. And now that I speak of the committees above stairs, I must say, that having till lately attended them a good deal, I have observed that no description of members give so little attendance, either to communicate, or to obtain instruction upon matters of commerce, as the honourable members of the grave board of trade. I really do not recollect, that I have ever seen one of them in that sort of business. Possibly, some members may have better memories; and may call to mind some job that may have accidentally brought one or other of them, at one time or other, to attend a matter of commerce.

If ever there were commercial points of great weight, and most closely connected with our dependencies, they are those which have been agitated and decided in parliament since I came into it. Which of the innumerable regulations since [redacted] had their origin or their improvement in the board of trade? Did any of the several East India bills which have been successively produced since 1767, originate

there? Did any one dream of referring them, or any part of them thither? Was any body so ridiculous as even to think of it? If ever there was an occasion on which the board was fit to be consulted, it was with regard to the acts that were preludes to the American war, or attendant on its commencement: those acts were full of commercial regulations, such as they were;—the intercourse bill; the prohibitory bill; the fishery bill. If the board was not concerned in such things, in what particular was it thought fit that it should be concerned? In the course of all these bills through the house, I observed the members of that board to be remarkably cautious of intermeddling. They understood decorum better; they know that matters of trade and plantation are no business of theirs.

It was but the other day, that the noble lord in the blue riband carried up to the house of peers, two acts, altering, in a great degree, our whole commercial system. Those acts, I mean, for giving a free trade to Ireland in woollens and in all things else, with independent nations, and giving them an equal trade to our own colonies. Here too the novelty of this great, but arduous and critical improvement of system would make you conceive that the anxious solicitude of the noble lord in the blue riband, would have wholly destroyed the plan of summer recreation of that board, by references to examine, compare, and digest matters for parliament—You would imagine, that Irish commissioners of customs, and English commissioners of customs, and commissioners of excise, that merchants and manufacturers of every denomination, had daily crowded their outer rooms. *Nil horum*. The perpetual virtual adjournment, and the unbroken sitting vacation of that board, was no more disturbed by the Irish than by the plantation committee or any other commerce. The same matter made a large part of the business which occupied the house for two sessions before; and as our ministers were not then mellowed by the mild, emollient, and engaging blandishments of our dear sister, into all the

tenderness of unqualified surrender, the bounds and limits of a restrained benefit naturally required much detailed management and positive regulation. But neither the qualified propositions which were received, nor those other qualified propositions which were rejected by ministers, were the least concern of theirs, nor were they ever thought of in the business.

It is therefore, sir, on the opinion of parliament, on the opinion of the ministers, and even on their own opinion of their inutility, that I shall propose to you to suppress the board of trade and plantations, and to recommit all its business to the council from whence it was improvidently taken; and which business (whatever it might be) was much better done, and without any expense; and indeed where in effect it may all come at last. Almost all that deserves the name of business there, is the reference of the plantation acts to the opinion of gentlemen of the law. But all this may be done, as the Irish business of the same nature has always been done, by the council, and with a reference to the attorney and solicitor general.

There are some regulations in the household, relative to the officers of the yeomen of the guards, and the officers and band of gentlemen pensioners, which I shall likewise submit to your consideration, for the purpose of regulating establishments, which at present are much abused.

I have now finished all, that for the present I shall trouble you with on the plan of reduction. I mean next to propose to you the plan of arrangement, by which I mean to appropriate and fix the civil list money to its several services, according to their nature; for I am thoroughly sensible, that if a discretion, wholly arbitrary, can be exercised over the civil list revenue, although the most effectual methods may be taken to prevent the inferiour departments from exceeding their bounds, the plan of reformation will still be left very imperfect. It will not, in my opinion, be safe to permit an entirely arbitrary discretion even in the first lord of the treasury himself: It will not be safe to leave with him a power of diverting the

publick money from its proper objects, of paying it in an irregular course, or of inverting perhaps the order of time, dictated by the proportion of value, which ought to regulate his application of payment to service.

I am sensible, too, that the very operation of a plan of economy, which tends to exonerate the civil list of expensive establishments, may in some sort defeat the capital end we have in view—the independence of parliament; and that in removing the publick and ostensible means of influence, we may increase the fund of private corruption. I have thought of some methods to prevent an abuse of surplus cash under discretionary application; I mean the heads of *secret service, special service, various payments*, and the like; which, I hope, will answer, and which, in due time, I shall lay before you. Where I am unable to limit the quantity of the sums to be applied, by reason of the uncertain quantity of the service, I endeavour to confine it to its *line*; to secure an indefinite application to the definite service to which it belongs; not to stop the progress of expense in its line, but to confine it to that line in which it professes to move.

But that part of my plan, sir, upon which I principally rest, that on which I rely for the purpose of binding up and securing the whole, is to establish a fixed and invariable order in all its payments, which it shall not be permitted to the first lord of the treasury, upon any pretence whatsoever, to depart from. I therefore divide the civil list payments into *nine* classes, putting each class forward according to the importance or justice of the demand, and to the inability of the persons entitled to enforce their pretensions; that is, to put those first who have the most efficient offices, or claim the justest debts; and, at the same time, from the character of that description of men, from the retiredness, or the remoteness of their situation, or from their want of weight and power to enforce their pretensions, or from their being entirely subject to the power of a minister, without any reciprocal power of awing him, ought to be the

most considered, and are the most likely to be neglected; all these I place in the highest classes: I place in the lowest those whose functions are of the least importance, but whose persons or rank are often of the greatest power and influence.

In the first class I place the *judges*, as of the first importance. They ought to be as *weak solicitors on their own demands*, as strenuous asserters of the rights and liberties of others. The judges are, or ought to be, of a *reserved* and retired character, and wholly unconnected with the political world.

In the second class I place foreign ministers. They are not upon the spot to demand payment, and are therefore the most likely to be, as in fact they have sometimes been, entirely neglected, to the great disgrace, and perhaps the great detriment of the nation.

In the third class I would bring all the tradesmen who supply the crown by contract, or otherwise.

In the fourth class I place all the domestick servants of the king, and all persons in efficient offices, whose salaries do not exceed two hundred pounds a year.

In the fifth, upon account of honour, which ought to give place to nothing but charity and rigid justice, I would place the pensions and allowances of his majesty's royal family, comprehending, of course, the queen, together with the stated allowance of the privy purse.

In the sixth class, I place those efficient offices of duty, whose salaries may exceed the sum of two hundred pounds a year.

In the seventh class, that mixed mass, the whole pension list.

In the eighth, the offices of honour about the king.

In the ninth, and the last of all, the salaries and pensions of the first lord of the treasury himself, the chancellor of the exchequer, and the other commissioners of the treasury.

If by any possible mismanagement of that part of the revenue which is left at discretion, or by any other mode of prodigality, cash should be deficient for the

payment of the lowest classes, I propose that the amount of those salaries where the deficiency may happen to fall, shall not be carried as debt to the account of the succeeding year, but that it shall be entirely lapsed, sunk, and lost; so that government will be enabled to start in the race of every new year, wholly unloaded, fresh in wind and in vigour. Hereafter, no civil list debt can ever come upon the publick. And those who do not consider this as saving, because it is not a certain sum, do not ground their calculations of the future on their experience of the past.

I know of no mode of preserving the effectual execution of any duty, but to make it the direct interest of the executive officer that it shall be faithfully performed. Assuming, then, that the present vast allowance to the civil list is perfectly adequate to all its purposes, if there should be any failure, it must be from the mismanagement or neglect of the first commissioner of the treasury; since, upon the proposed plan, there can be no expense of any consequence, which he is not himself previously to authorize and finally to control. It is therefore just, as well as politick, that the loss should attach upon the delinquency.

If the failure, from the delinquency, should be very considerable, it will fall on the class directly above the first lord of the treasury, as well as upon himself and his board. It will fall, as it ought to fall, upon offices of no primary importance in the state; but then it will fall upon persons, whom it will be a matter of no slight importance for a minister to provoke—it will fall upon persons of the first rank and consequence in the kingdom; upon those who are nearest to the king, and frequently have a more interior credit with him than the minister himself. It will fall upon masters of the horse, upon lord chamberlains, upon lord stewards, upon grooms of the stole, and lords of the bedchamber. The household troops form an army, who will be ready to mutiny for want of pay, and whose mutiny will be *really* dreadful to a

commander in chief. A rebellion of the thirteen lords of the bed chamber would be far more terrible to a minister, and would probably affect his power more to the quick, than a revolt of thirteen colonies. What an uproar such an event would create at court! What *petitions*, and *committees*, and *associations* would it not produce! Bless me! what a clattering of white sticks and yellow sticks would be about his head—what a storm of gold keys would fly about the ears of the minister—what a shower of Georges, and Thistles, and medals, and collars of S. S. would assail him at his first entrance into the antichamber, after an insolvent Christmas quarter! A tumult which could not be appeased by all the harmony of the new year's ode. Rebellion it is certain there would be; and rebellion may not now indeed be so critical an event to those who engage in it, since its price is so correctly ascertained;—ascertained at just a thousand pounds.

Sir, this classing, in my opinion, is a serious and solid security for the performance of a minister's duty. Lord Coke says, that the staff was put into the treasurer's hand, to enable him to support himself when there was no money in the exchequer, and to beat away importunate solicitors. The method which I propose, would hinder him from the necessity of such a broken staff to lean on, or such a miserable weapon for repulsing the demands of worthless suitors, who, the noble lord in the blue riband knows, will bear many hard blows on the head, and many other indignities, before they are driven from the treasury. In this plan he is furnished with an answer to all their importunity; an answer far more conclusive than if he had knocked them down with his staff—“Sir (or my Lord) you are calling for my own salary—Sir, you are calling for the appointments of my colleagues who sit about me in office—Sir, you are going to excite a mutiny at court against me—you are going to estrange his majesty's confidence from me, through the chamberlain, or the master of the horse, or the groom of the stole.”



As things now stand, every man, in proportion to his consequence at court, tends to add to the expenses of the civil list, by all manner of jobs, if not for himself, yet for his dependants. When the new plan is established, those who are now suitors for jobs, will become the most strenuous opposers of them. They will have a common interest with the minister in public economy. Every class, as it stands low, will become security for the payment of the preceding class; and thus the persons whose insignificant services defraud those that are useful, would then become interested in their payment. Then the powerful, instead of oppressing, would be obliged to support the weak; and idleness would become concerned in the reward of industry. The whole fabrick of the civil economy would become compact and connected in all its parts; it would be formed into a well organized body, where every member contributes to the support of the whole; and where even the lazy stomach secures the vigour of the active arm.

This plan, I really flatter myself, is laid, not in official formality, nor in airy speculation, but in real life, and in human nature; in what "comes home (as Bacon says) to the business and bosoms of men." You have now, sir, before you, the whole of my scheme, as far as I have digested it into a form, that might be in any respect worthy of your consideration.—I intend to lay it before you in five bills. The plan consists, indeed of many parts; but they stand upon a few plain principles. It is a plan which takes nothing from the civil list without discharging it of a burthen equal to the sum carried to the publick service. It weakens no one function necessary to government; but on the contrary, by appropriating supply to service, it gives it greater vigour. It provides the means of order and foresight to a minister of finance, which may always keep all the objects of his office, and their state, condition, and relations, distinctly before him. It brings forward accounts without hurrying and distressing the accountants; whilst it provides for publick convenience, it regards private

rights. It extinguishes secret corruption almost to the possibility of its existence. It destroys direct and visible influence equal to the offices of at least fifty members of parliament. Lastly, it prevents the provision for his majesty's children, from being diverted to the political purposes of his minister.

These are the points, on which I rely for the merit of the plan. I pursue economy in a secondary view, and only as it is connected with these great objects. I am persuaded, that even for supply, this scheme will be far from unfruitful, if it be executed to the extent I propose. I think it will give to the publick, at its periods, two or three hundred thousand pounds a year; if not, it will give them a system of economy, which is itself a great revenue. It gives me no little pride and satisfaction, to find that the principles of my proceedings are, in many respects, the very same with those which are now pursued in the plans of the French minister of finance. I am sure, that I lay before you a scheme easy and practicable in all its parts. I know it is common at once to applaud and to reject all attempts of this nature. I know it is common for men to say, that such and such things are perfectly right—very desirable; but that, unfortunately, they are not practicable. Oh! no, sir, no. Those things which are not practicable, are not desirable. There is nothing in the world really beneficial, that does not lie within the reach of an informed understanding, and a well directed pursuit. There is nothing that God has judged good for us, that he has not given us the means to accomplish, both in the natural and moral world. If we cry, like children for the moon, like children we must cry on.

We must follow the nature of our affairs, and conform ourselves to our situation. If we do, our objects are plain and compassable. Why should we resolve to do nothing, because what I propose to you may not be the exact demand of the petition; when we are far from resolved to comply even with what evidently is so? Does this sort of chicanery become us? The people are the masters. They have only to

express their wants at large and in gross. We are the expert artists ; we are the skilful workmen, to shape their desires into perfect form, and to fit the utensil to the use. They are the sufferers : they tell the symptoms of the complaint ; but we know the exact seat of the disease, and how to apply the remedy, according to the rules of art. How shocking would it be to see us pervert our skill into a sinister and sordid dexterity, for the purpose of evading our duty, and defrauding our employers, who are our natural lords, of the object of their just expectations. I think the whole not only practicable, but practicable in a very short time. If we are in earnest about it, and if we exert that industry, and those talents in forwarding the work, which I am afraid may be exerted in impeding it—I engage, that the whole may be put in complete execution within a year. For my own part, I have very little to recommend me for this or for any task, but a kind of earnest and anxious perseverance of mind, which with all its good and all its evil effects, is moulded into my constitution. I faithfully engage to the house, if they choose to appoint me to any part in the execution of this work, which (when they have made it theirs by the improvements of their wisdom, will be worthy of the able assistance they may give me) that by night and by day, in town or in country, at the desk or in the forest, I will, without regard to convenience, ease or pleasure, devote myself to their service, not expecting or admitting any reward whatsoever. I owe to this country my labour, which is my all ; and I owe to it ten times more industry, if ten times more I could exert. After all, I shall be an unprofitable servant.

At the same time, if I am able, and if I shall be permitted, I will lend a humble helping hand to any other good work which is going on. I have not, sir, the frantick presumption to suppose, that this plan contains in it the whole of what the publick has a right to expect, in the great work of reformation they call for. Indeed, it falls infinitely short of it. It falls short, even of my own ideas. I have some thoughts

not yet fully ripened, relative to a reform in the customs and excise, as well as in some other branches of financial administration. There are other things, too, which form essential parts in a great plan for the purpose of restoring the independence of parliament. The contractors' bill of last year it is fit to revive; and I rejoice that it is in better hands than mine. The bill for suspending the votes of custom-house officers, brought into parliament several years ago, by one of our worthiest and wisest members\* (would to God we could along with the plan revive the person who proposed it!) But a man of very real integrity, honour, and ability, will be found to take his place; and to carry his idea into full execution. You all see how necessary it is to review our military expenses for some years past, and, if possible, to bind up and close that bleeding artery of profusion: but that business also, I have reason to hope, will be undertaken by abilities that are fully adequate to it. Something must be devised (if possible) to check the ruinous expense of elections.

Sir, all or most of these things must be done. Every one must take his part.

If we should be able by dexterity or power, or intrigue, to disappoint the expectation of our constituents, what will it avail us? we shall never be strong or artful enough to parry, or to put by the irresistible demands of our situation. That situation calls upon us, and upon our constituents too, with a voice which *will* be heard. I am sure no man is more zealously attached than I am to the privileges of this house, particularly in regard to the exclusive management of money. The lords have no right to the disposition, in any sense, of the publick purse; but they have gone further in self denial than our utmost jealousy could have required. A power of examining

\* W. Dowdeswell, Esq. chancellor of the exchequer, 1768.

† In the debate on the rejection of lord Shelburne's motion in the house of lords.

accounts, to censure, correct, and punish, we never, that I know, have thought of denying to the house of lords. It is something more than a century since we voted that body useless: they have now voted themselves so. The whole hope of reformation is at length cast upon us: and let us not deceive the nation, which does us the honour to hope every thing from our virtue. If all the nation are not equally forward to press this duty upon us, yet be assured, that they all equally expect we should perform it. The respectful silence of those who wait upon your pleasure, ought to be as powerful with you as the call of those who require your service as their right. Some, without doors, affect to feel hurt for your dignity, because they suppose, that menaces are held out to you. Justify their good opinion, by showing that no menaces are necessary to stimulate you to your duty. But, sir, whilst we may sympathize with them in one point, who sympathize with us in another, we ought to attend no less to those who approach us like men, and who, in the guise of petitioners, speak to us in the tone of a congealed authority. It is not wise to force them to speak out more plainly, what they plainly mean. But, the petitioners are violent! Be it so. Those who are least anxious about your conduct, are not those that love you most. Moderate affection and satiated enjoyment, are cold and respectful; but an ardent and injured passion, is tempered up with wrath, and grief, and shame, and conscious worth, and the maddening sense of violated right. A jealous love lights his torch from the firebrands of the furies. They who call upon you to belong wholly to the people, are those who wish you to return to your proper home; to the sphere of your duty, to the post of your honour; to the mansion house of all genuine, serene, and solid satisfaction. We have furnished to the people of England (indeed we have) some real cause of jealousy. Let us leave that sort of company which, if it does not destroy our innocence, pollutes our honour: let us free ourselves at once from every thing that can increase their suspi-

cions, and inflame their just resentment; let us cast away from us, with a generous scorn, all the love-tokens and symbols that we have been vain and light enough to accept; all the bracelets, and snuff-boxes, and miniature pictures, and hair devices, and all the other adulterous trinkets, that are the pledges of our alienation, and the monuments of our shame. Let us return to our legitimate home, and all jars and all quarrels will be lost in embraces. Let the commons in parliament assembled, be one and the same thing with the commons at large. The distinctions that are made to separate us, are unnatural and wicked contrivances. Let us identify, let us incorporate ourselves with the people. Let us cut all the cables and snap the chains which tie us to an unfaithful shore, and enter the friendly harbour, that shoots far out into the main its moles and jetties to receive us.—“War with the world, and peace with our constituents.” Be this our motto and our principle. Then, indeed, we shall be truly great. Respecting ourselves, we shall be respected by the world. At present all is troubled and cloudy, and distracted, and full of anger and turbulence, both abroad and at home: but the air may be cleared by this storm, and light and fertility may follow it. Let us give a faithful pledge to the people, that we honour, indeed, the crown; but that we *belong* to them; that we are their auxiliaries, and not their task-masters; the fellow labourers in the same vineyard; not lording over their rights, but helpers of their joy: that to tax them is a grievance to ourselves, but to cut off from our enjoyments to forward theirs, is the highest gratification we are capable of receiving. I feel with comfort, that we are all warmed with these sentiments, and while we are thus warm, I wish we may go directly, and with a cheerful heart, to this salutary work.

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## SPEECH

OF THE RIGHT HON. SIR HERCULES LANGRISHE,

ON THE BILL "TO IMPROVE AND AMEND THE STATE OF THE REPRESENTATION OF THE PEOPLE IN PARLIAMENT," PRESENTED IN THE HOUSE OF COMMONS, OF IRELAND, ON THE NINETEENTH OF JULY, 1793.

**SIR** Hercules Langrishe was, for many years, a leading member of the Irish House of Commons, and was distinguished, particularly, by the soundness and liberality of his politicks, and by the ease, vivacity, and brilliancy of his eloquence. Though the uniform and strenuous supporter of all those well tempered measures of reform which have so sensibly promoted the prosperity, and meliorated the general condition of Ireland, during the present reign, he nevertheless, made the most determined resistance to all the schemes of idle, or flagitious innovation, which, were proposed in the delirium of the fever excited by the contagion of the French revolution.

Connected with the late Mr. Burke by the ties of cordial friendship, he seems, indeed, to have imbibed, in the fullest extent, his reverence for ancient establishments, and his detestation of the rude attempts of empirical presumption to amend, by any change, *that constitution which* had been formed by *the successive wisdom of ages*, and approved by *the experience of inextimable benefits*.

When, therefore, in the year 1793, a bill was introduced to "improve the representation of the people in parliament," it met with his decided opposition. In the speech, pronounced on the occasion, he not



only enforces the wholesome doctrines of his friend, but emulates, with peculiar felicity, some of the finest traits of his eloquence. Few speeches are more deserving of attention. We recommend it with the strongest emphasis. The statesman will recognize in it his best principles. Those who have derived their political creed from the "New School" may here learn, among other truths, "*that the equality of man is what God, or nature, or civil society, never once ordained or accomplished,*" and that, in short, by no device, neither by agrarian law, nor universal suffrage, nor *sonorous Declarations*, can the bed of Procrustes be applied to government.

### SPEECH, &c.

MR. SPEAKER,

FOUR months have already passed, since leave was given to bring in a bill "to improve the representation of the people in parliament." The subject has therefore, in my opinion, already too long engaged the attention of the people, without having been submitted to the discussion of parliament. It now comes forward at a period of the session so far advanced, as must preclude all possibility of its present success. However, I do not wish to have it laid by, as it were, to *ripen by fermentation*. I cannot prevail on myself to let it go in reference to the people, with the authority of so respectable members as those who patronise it, altogether unquestioned and uncontroverted, at least, without stating some of those arguments which have impressed upon my mind a conviction of the inexpediency, and danger of the measure.

When I had formerly the honour of addressing you on the subject of parliamentary reform, we could only regulate our opinions by the *probable* effects of systems, that were but speculation; and theories, which had not been tried. The present time is more enlightened, inasmuch as these theories have been reduced to practice, and we may now learn by the

experience of others, to judge with more precision and decide with more authority.

The eventful period of the last four years has furnished such abundant instruction on the subject of reform, that in addressing you on the present occasion I should find it difficult to confine myself within moderate limits, if I had not the happiness to observe that the publick mind was already embracing the wholesome admonition; and if the present stage of the bill, and period of the session, did not render unseasonable so ample a discussion. However, sir, as I rise to express sentiments of opposition to a measure that *professes* to be the *popular wish*, I must say something in vindication of those sentiments.

It is of very little consequence to the country what individual may be affected in his private interest by the operation of this bill. It is of little consequence what transfer of power may be made from one man, or set of men, to another. It is of little consequence what changes you make in the political situation of any man; provided you do not change the condition of the general happiness; provided you do not weaken the reverence for ancient establishment, or shake the stability of a constitution, which has had for its formation the successive wisdom of ages, and has proved in its effects so competent to civil liberty and progressive prosperity. But my objection to the present bill, or to your agitating the subject of it at this particular time, is that you *justify popular demand*, by conceding to its principle, and you *disappoint the popular demand* by the *measure of your concession*. When you concur with the people in discontents at their condition, and justify them by a partial concession, you authorize those discontents, but you do not conclude them. On the contrary, you give them perpetual succession and unceasing demand; you deface the chart of the old constitution; you level the old boundaries between government and the people, which, like those between the sea and the land, are constituted in *inequality*, and *eminence* of situation: and when you thus let loose the ocean of popular demand, restless and

successive as the waves that break upon your shore, you will not have the voice of Omnipotence, that can say, "so far shalt thou come, and no further." It is not at the *time of a storm* at least, that you can venture on such an experiment: at no season could you attempt it without great hazard.

But the prevailing argument, which is to silence every tongue, and convince every understanding on this subject, is, "that the *voice of the people* calls for a parliamentary reform;" an argument of much weight indeed, if it were well founded! But notwithstanding all I have heard to that purpose, I do not believe the fact to be so. The people of Ireland are *many*: the agitators, the writers for the publick prints, the heroes, and the historians of newspapers, are *few*; though they speak, as it were, with many tongues. The discontented are clamorous, the contented are silent; the songs of industry are only heard at home, whilst the trumpet of discord is audible from shore to shore.

I know there are several respectable persons, who think favourably of a parliamentary reform. Several very respectable members of this house have indulged themselves in something like enthusiasm on the subject. They have woven garlands to decorate the offering, and prepared crowns of laurel for those who should administer the sacrifice. And yet, when they have disclosed the particular object of their idolatry; when they have stated the different plans, with which they have favoured us during the course of this session, they have discovered a sufficient *diversity of opinion* indeed. Therefore, I can never be persuaded, that the people of Ireland are unanimous in calling for a measure, when scarcely any two of them are agreed in their sense of the measure itself. *Reform* is a word to which every reformer annexes his own idea. It is a picture, that every man draws from his own imagination, and sometimes colours to his own interest. Therefore, if you say the people are unanimous in calling for a parliamentary reform, you describe a whimsical unanimity indeed, a unanimity of discordance; something like that ridiculous concert you have

heard of, in which every man sings a different tune; but as they all make a noise together, they call it a concert.

The fact is, that in times like the present, when the most mischievous industry has been employed to propagate new notions of government, and new models of constitution; mere *popular clamour* is ever ready at the call of those who invite it; and there are many to be found who take up the word *reform*, or any other parole of discontent, because they know it means *innovation*, and may be commotion. For there are in all countries, however free and however happy, many to be found too restless for peace, and too turbulent for government; men out of the habits of tranquillity; men whom commerce cannot enrich, or freedom satisfy. There are to be found in all countries many who have neither property, nor industry, nor occupation; who must embrace every thing like a change, and aspire at commotion, because they know victory may be acquisition, and defeat can take nothing from them. “*Nam semper in civitate quibus opes nullæ sunt, bonis invident, malos extollent, vetera odere, nova exoptant; odio suarum rerum mutari omnia student.*” Such men are ever ready to raise a *popular clamour*, which is too often mistaken for the *voice of the people*; whilst successful industry and conscientious happiness remain silent, looking for stability, not innovation; for enjoyment, not experiment.

The only plan of reform that comes home to the wishes or understanding of the people, is that which comprehends *the whole of the people*: and that you know very well would not be the British constitution, but a pure democracy; it would be the sovereign power in the hands of those who had no property; the first exercise of which power would be to take the property from those who had it. Yet this is the reform which, when any thing has been specifically referred to, the people have demanded. And I have in my hand a printed plan, formed on that very principle, which has been industriously circulated, and which embraces to all

intents and purposes the purity and perfection of the French republick.

I know very well the honourable member who has brought forward this bill, and those who cooperate with him, reprobate such notions as strongly as we do. Yet I must say, if you loosen the habits of men from accustomed government and experienced happiness, you will not be able to recall them to tranquillity by your *temperate plans of reform*; plans that cannot reach the majority of the people: and do you imagine this great majority of the people (which are and must be left out of your plans), whilst by your concessions you are flattering their exertions, will be satisfied with their own exclusion?—No, sir! they would grow more confident from their apparent victory, and more extravagant from being disappointed in their share of the plunder. And this is the misfortune (and it is a great one) of turning the publick mind from the contemplation of its happiness to the vanity of speculation, or the rashness of experiment.

Well regulated society ascertains to every man his sphere of action, proportioned to his condition and capacity; every violation of that order is publick confusion. If your taylor were to employ himself in mending your form of government, he would not mend your cloaths; if he were to spend his time in studying *the rights of man*, he would soon want the food of man; like poor Quidnunc the upholsterer, in devouring the papers for intelligence, he would learn the intelligence of his own bankruptcy. The fact is, sir, when the people at large take up the trade of politicks, they will not follow any other trade; when artisans become constitution-makers, they will scarcely make any thing else; they will not make hats, they will not make shoes, they will not make linen cloth. They may indeed *make a noise*, which they may call the *voice of the nation*; they may *make a riot*, which they may call the *energy of the people*. But in the mean time the progress of the nation is stopped, Manufactures will not grow out of idleness,

prosperity out of politicks, or order out of ale-houses; commerce will not draw bills of exchange on debating clubs, and publick credit will retire from the terrors of armed associations. You see the progress and the mischiefs of what is called *popular discussion*; that is, the people talking instead of working; talking of what they do not understand, instead of applying themselves to their own business; debating instead of weaving, and making as many parliaments in the country as there are porter houses. You see, sir, the inevitable consequences of yielding to the principle of innovation; and tell me if your experience of the state of this country for these last six months confirms or confutes my representations on this subject.

It becomes every wise state, in regulating its policy, to look to the progress of great events in other countries; and we must be negligent to a degree of insensibility, if we do not look to every circumstance that led to the calamitous revolution of France. In the first *revolutionary reform* of France, in the year 1789, the elective franchise was confined to *active citizens*, ascertained by maturity of years, and some degree of property. But it soon was discovered, that of twenty-six millions of people there were not three millions of active citizens; and that the *immediate electors* were not in the proportion of one to a hundred of the people. The consequence was, that the great majority of the people thus excluded, corrupted by the false maxim of their new government, "that personal representation was necessary to freedom; and transported by their successes with that phrenzy of, I will not say liberty, but licentious domination, which has since overturned every principle of human virtue and human happiness, complained, "that they were slaves—that they were unrepresented—that they were bound by laws to which they had not agreed, and that the National Convention did not speak the national will." They therefore, by a bold effort, by the interposition of clubs, and associations, and armed citizens, completed their reform, an equal

representation of *all* the people; and accomplished, in my opinion, the perfection of tyranny, the democracy of France.

In Ireland the number of electors does not amount to 100,000; they are not near so many. The present bill does not, in my opinion, go to increase the number; nor will you ever propose a plan (for I know you will never propose a democracy) which would in any very considerable degree increase them. But I will suppose that you were—that they were to be augmented to the number of 200,000; yet still you would find, that of 4,000,000 of people, 3,800,000 would remain deprived of the elective franchise; nineteen in twenty of the people. Now, sir, if by yielding to the current of innovation you disengage this great majority of the people from their habits of veneration for the old constitution; if you amuse them with notions of equal or personal representation, which do not belong to our form of government (and are therefore notions, not of reform, but of revolution) is it not natural to suppose that you will have them, like their neighbours, calling out for a new constitution; an equal representation of *all* the people?—You will have them at once animated and disappointed by your concession, complaining that *they* are slaves—that they are not represented—that they are bound by laws to which they have not agreed; with all that cant which belongs to *French equality*, not to *British liberty*.

You see, sir, if you yield in any degree to the principle of equal representation, you set the publick mind loose into the mazes of speculation, and you can never satisfy it. You will never conform your practice to that principle, because you know that principle is not to be found in our constitution; but by going as far as your speeches profess, and your bill now proposes, you will give the energy of success to the extravagance of enterprise, and inspire the people with the vain notions, “that tranquillity is supineness, and that turbulence will be triumph.” And as to the notion of *satisfying moderate men by a temperate reform*,

it is the most vain and fruitless project that ever entered into the mind of man. If you once set loose amongst the people the spirit of reform, the moderate reformers would soon be lost in the predominancy of popular power. *Their* satisfaction would exactly operate here as it did in France; the moderate men would be the first victims of their own moderation. You cannot now have recourse to the living testimony of those who could best inform you on this subject; you cannot now consult Clermont Tonere, the Duke Brisac, Mons. Pascalis, or the others of that numerous band, who were distinguished and devoted as the moderate reformers of France. They are no more! But their monuments (if the barbarity of their countrymen who were their assassins had not precluded them from these last honours) their monuments would have furnished records in marble of the vanity and danger of such experiments.

To show you that the sentiments I utter are not the dreams of a visionary, or the fictions of an interested man, I will read to you some manifestos on this subject, which have been lately circulated through the country. I will show you how great bodies of reformists express their loyalty, and what they expect from their reform. I will show you loyalty rejoicing at the overthrow of monarchy, and the spirit of reform in admiration of the democracy of France.

I do not know the persons, nor indeed many of the places from which these doctrines have proceeded; but as the authors of them have published them repeatedly, to the end that they may be generally known, and make an impression on the publick mind, I only cooperate in their intentions, by extending their notoriety; by stating them to you, that they may make a due impression upon your mind.

For that purpose I shall now beg leave to point out to your observation a bright luminary, which has lately made its appearance in the northern hemisphere. It is not that newly discovered planet, which, from the benignity of its radiance, may have been distinguished by the title of the Georgium Sidus. It is not that



North Star, by which, I trust, those who guide the helm of the state, will shape their political course. It is the newspaper, called the Northern Star, printed at Belfast, which I am going to read to you as part of my speech.\*

I have laid before you some detail of the public sentiment, as it has been publicly professed on this subject; in no instance of which can I discriminate between reform and subversion. If the people call, as they do, for personal representation, they call for *what* personal representation has given to France. And do you not imagine, men will imitate what they admire, and pursue what they think happiness? I have given you the sentiments of the reformists under various conditions of the human mind; under the solemnity of religious concord—under the pride and honour of arms—under the ingenuous impressions of social sincerity; and they are all the same. They tell you, “they approve a government by king, lords, and commons,” whilst they are engaged at their festivals on the overthrow of monarchy. They call aloud for a reform of parliament, whilst they are extolling the *Rights of Man*, and celebrating the successes of the French arms: and in the open heartedness of their conviviality, with a sally of wit proportioned to their talents, but expressive of their principles, they toast “the cannon law of the people.”—They tell you, “they will arm and cooperate with other armed citizens of Ireland, in procuring, by *every means in their power*, an equal representation of *all* the people in parliament.” They tell you, “they are firmly resolved to carry their arms, and wear their uniforms, until a complete reform in the representation of their country in parliament be obtained; tithes, and unmerited pensions, totally abolished; which they hope to see effected *without a revolution!*” They describe to

\* Here he read to the house a great variety of extracts and passages, out of several of those papers, being the declarations of several bodies of men on the subject of reform, and then proceeded.

you pretty emphatically the conditions of government, when "resistance is publick virtue, sanctioned by the laws of heaven, and the *rights of man*. Let pensioned hirelings, the political quakers of the day, tremble; they *denounce* all such; and will not be deterred from their duty, until they shall taste the sweets of freedom, and pluck the fruit luxuriant from the *tree of liberty*." They talk in raptures of "the *republick of France*—of *liberty and equality*—a speedy *convention of the people*, and *dissolution of the club of monopolists*." They tell you expressly, "that extending the elective franchise to *all* the members of the community, is the only method by which the repeal of laws, oppressive and unconstitutional, can be obtained, and the publick mind quieted." And they all agree, that the sentiments, which they dictate, shall be resounded through the nation, by the organ of a national convention. Here, sir, you have great bodies of men speaking their sentiments to you explicitly. They talk to you of their wishes, and their means, their counsels, and their swords. Are you decided to make a stand against such principles, and resist such demands? I know you are! And if you are, you cannot entertain a measure, which, however well intended, must be understood to justify the *one*, and concede to the *other*.

I omit dwelling on the proceedings of the late convention of Dungannon. I omit observing, as I might do, on the late valedictory admonition of the catholick committee; which, "after that thou hadst not denied them the request of their lips, but hadst granted them their hearts' desire, might have departed in peace;" might have repressed the impulse of that impatient zeal, which exposed them to the charge, that before they were well seated within the temple of the constitution, they were persuaded to preach dissention to its ministers, and a schism in its doctrines. I shall only observe on these transactions (what I have already said to you upon a former occasion, and what I can never repeat too often, to do justice to the sincerity of my conviction) "that your constitution will

speedily become extinct, and your liberties prostrate in the dust, if you suffer conventions, committees, associations, or clubs, to assume authority in your public affairs." And the mischiefs of that revolution, which some moderate men "hope may not be necessary," have already commenced, if armed citizens dictate to the parliament of the land. You see, sir, these sentiments of reform, which I have read to you, are *Mr. Paine's philosophy*; exhibited in a new edition, with a delusive frontispiece, as it were, with a device of the king's arms scrolled on the title page. They have their liberty and equality, and their rights of man; they complain that the many are governed by the few; they assume the foppery of French phrase, as well as French principle, and cultivate the tree of liberty; they discard the sanctity of ancient establishment, and make government (as Mr. Paine expresses it) "the work of a day." I hope it will not be the work of *this* day. For my part I shall ever prefer the consecutive wisdom of ages to the growth of a day. I prefer the oak, that has taken deep root in your land, that has stood the shocks of time, the succession of seasons, and the changes of the heavens, to the *tweeds of the field*, which are the growth of the day, the production of wildness, and the promise of desolation. Though I had no other reason for it, I would preserve those chartered rights—those corporate bodies, as so many strong-holds in the constitution against these dangerous incursions. Nothing should persuade me to *dismantle* them, at the very time when such pernicious doctrines have taken the field against them. It would be a policy, as injurious in its consequences as that of Joseph the Second, in the Netherlands, who, by demolishing the old fortresses of his country, exposed it to the ravages of a reforming army.

When the reformists here in the spirit of French principle complain, "that the many are governed by the few;" they complain of almost every government that ever existed, and of that very government which this bill proposes to them. I never knew or read

of a government, at least from the days of Pericles to those of Pethion (pardon the association) in which the interests and the will of the *many* were not intrusted to the discretion of the *few*. If the *multitude* were to govern, it would in the first instance be the government of ignorance over wisdom, and of violence over order; in the end, the people themselves would be enslaved. The fact is, the power of the people, like the dominion of female beauty, does not long survive the moment of their being corrupted. They are flattered until they are seduced, and when they are seduced, the seducer becomes the tyrant. You will find the truth of this position not only in the legends of love, but in the history of every democracy or popular insurrection that ever existed; you may read it in the representations of Roland, of Pethion, of Dumourier themselves; you may read it in the destiny of that country, in which (as an able writer expresses it) "suspicion fills their prisons, and massacre is their gaol delivery." And as to the *equality of man*, which has been preached up as a part of the creed of your modern philosophers and reformers, I shall only say—*equality of man is what God, or nature, or civil society, never once ordained; or accomplished. Men are not born equal! Capacity and stupidity, strength and weakness, distinguish them almost in their mother's womb. Disparity is the birth-right of man.* And as natural endowments are unequal, so are those that are to be acquired; *power and property must be unequal.* If the advocates for liberty and equality were to divide in equal shares amongst the people the whole property of the nation; that equality of partition would not last for one month; the differences that arise from wisdom and folly, strength and weakness, industry and idleness, parsimony and prodigality; these disparities by their immediate operation, would overturn this equality, with all its consequences. You would soon see economy accumulating from the waste of profusion, and talents and genius gathering property and power from the imbecility of ignorance;

you would observe that some had lavished; and some had hoarded; and that whatever one man had *found*, another had *lost*; or if they were to draw wealth from a foreign source, they must draw it in different measures, according to their different faculties. For the magnitude of the burthen must be proportioned to the strength of the shoulders that are to bear it, or the activity of the spirit that is to pursue it.

There is only one relation, in which the equality of man is an idea just, or rational, or practicable; and that we enjoy in a more eminent degree than any country in the known world—I mean equal protection, equal taxation, and equal control of the laws over every man in the community. You need not contend for *that equality*; because, whatever may be the lot of other nations, you know you enjoy it already.

When we reflect on the tendency of these maxims; when we examine the doctrine and analyse the philosophy of these fathers of reform, Voltaire, Rousseau, Delambert, Mirabeau, Paine; these levellers of every venerable structure of settled happiness, we feel ourselves comparatively reconciled to the objects of our former aversion. The morality of Hobbs, the politics of Machievel, the enthusiasm of Vane; even the daring hypocrisy of Cromwell impress upon our minds a diminished abhorrence. How mild, how moderate, how compatible with human happiness do they appear, opposed to those pernicious theories, which, in contempt of the sanctity of covenant, and obligation of law, tell you, “that civil society begins where artificial government ends?”

I know very well that all free government is derived from the people, with a reference to their will and an attention to their happiness. Government is instituted for the good of the people, as the sun is for the light of the world. But the guidance of neither is to be committed to every presumptuous candidate for the reins (and there are many such in every

village) who, if they were to "obtain the chariot for one day, would set the world on fire."

All these notions that have disturbed the repose of the world, are dreams. But they are bad dreams; that leave a dangerous and distempered impression on the mind, which has in some countries broken out into paroxysms of popular phrensy.

It is to protect us against this popular phrensy, that I beseech you not to feed the minds of the people with discontents at old forms—at old constitutions. *Instituta majorum tueri sapientis est.* If at this time you detach the publick mind from this sacred devotion; if you set up reform, which is experiment, against ancient establishment, which has been happiness, there is not a vice of the age—there is not a phrensy of the day, that will not flock to the standard of reform. And so strongly is this sentiment impressed upon our sister country, that I myself have heard some of the greatest and best men in England—however speculatively friends to the notion of reform—however divided in party or in politicks, unite in one voice to declare, that this is not the time to agitate the question of reform."

As to the substance of the bill before you, I state my objections with some diffidence from the respect I bear to the gentlemen who have introduced it. But I must object to the bill as a *transfer of power*, rather than a *reform of parliament*. I object to the bill, as a justification of the popular demand, without going one step to satisfy it. It has been the fashion of this session to declare, that the publick mind is greatly agitated: a fashion, in my opinion, "more to be honoured in the breach than the observance;" and which, like every other fashion, has become ridiculous by being carried to the extreme. I have always thought such declarations rather *productive* than *descriptive*; much more likely to produce the evil they deprecate, than to describe what is already in existence. But if the publick mind be *ardent in its wishes* on that subject, the present bill would not gratify one of them. Whenever the peo-

ple have expressed their wishes on this subject, they were for an *equal*, or at least a *more equal* representation of the people in parliament. Now this bill, which is to satisfy the people—which is to settle the violent agitation of the publick mind, does not go to that object at all. The Catholick bill certainly did in a great degree; this bill does not in any degree.

In the first place it adds one member to each county. How would that operate? I omit dwelling on the obviously aristocratick tendency of that provision, as favouring the combination of the most powerful interests of each county to suppress competition. But does it tend to the more equal representation of the people in parliament? Quite the contrary! It increases the number of *the elected*, without increasing the number of *the electors*; which so far makes the representation more unequal than it was before. By the next provision, all freeholders of ten pounds a year, within a district of twenty-four miles circumference, are to be voters for boroughs. Now these ten pound electors for boroughs were before entitled to vote for county members. So you either transfer their franchise from the county to the borough, or allow the same person to vote for four members instead of two. In either case you do not add one man to the constituent body—not one!

The next provision obliges the future freemen (which in future must be all the freemen) to be men *resident* within the district, having a qualification of five pound per annum freehold. This must in a considerable degree diminish the constituent body; because you abolish those freemen who are not qualified, or not resident, and in return you confer the right of voting on those who, from their qualifications, must be entitled to vote in the county at large! Thus you still narrow the basis of representation, and make it more unequal than it was before.

There is one provision alone that affects to counteract this diminution of the constituent body—that which gives the right of voting to persons exercising certain trades, and having been a certain time resi-

tion; yet when it is examined, how inadequate to the end does it appear? In great and populous towns, they generally have that right already by charter; in potwalloping boroughs they have it from residence; in small and decayed boroughs, the numbers admitted under this title must be too inconsiderable to be worthy of calculation in this great account. So that on the whole, the effect of this bill would, in my opinion, be to decrease the number of the electors—to increase the number of the elected—to render the representation of the people in parliament more *unequal*—to give energy to innovation, and to disappoint the wishes which yourselves have inspired.—When the people call for an *equal* representation in parliament, can you suppose they will be satisfied with a law tending to make it more *unequal*? No, sir! the people who are clamorous for parliamentary reform would no more be satisfied with this bill than they would be, if they asked for *bread*, and you were to give them a *stone*.

The bill therefore would not, in my opinion, answer any publick good. It would be a transfer of power from one great man to another; from the oppidan to the lord of the manor; but it would be nothing more. And if it were not perhaps below the gravity of parliament, it would be matter of some curiosity to state the precise boroughs, which, with their rights, members and appurtenances, would by this act be conveyed from one individual to another, as specifically as lands and tenements are usually conveyed by any ordinary deed of conveyance. It would be an assignment to persons who from their local circumstances and situation, are as ascertainable as if they were specifically named; and, if I have not forgot all my law learning, Coke-Littleton states where “assignees may take advantage of a covenant real, without being named in the deed.” I am sure many would do so under this deed. There is, it is true, one difference between this and the ordinary forms of conveyance, which is, that in this case no valuable con-



sideration is given or expressed.—Perhaps the reason is, that to this deed in fact there are not *different parties*; for we are ourselves both grantors and grantees; and when the givers and receivers are the same persons, the *act of accepting* may be deemed a sufficient *consideration* for the grant. I must likewise admit that there are many amongst us who will not object to this bill *as differing in substance from its title*, which purports, “to improve and amend the state of the representation of the people in parliament;” because it is very natural for every one of us to think, that the state of the representation would be considerably improved, if it were to be composed principally of *our own friends*. But I object to the bill as conveying neither benefit nor satisfaction to the people. And when I consider the great abilities of the gentlemen who prepared it, I am the more convinced of the insuperable difficulties of new modelling a constitution that has been formed by the wisdom of ages, and approved by the experience of inestimable benefits.

It is the duty of parliament not to flatter the temporary delusions, but to consult the permanent interests of the people. It is the duty of the people to judge of parliament not by an abstract or speculative review of its *constituent parts*, but by its *general effects*. If it has been found competent to civil liberty and publick happiness, it has answered all the ends of good government. But superficial sagacity plumes itself on the discovery, that time has altered the condition of several places—that some boroughs are become decayed, and others deserted—that one is but a barn; another a steeple; another a tree.—What then? If the tree bring forth good fruit, it ought not to be hewn down, and cast into the fire.—If the general combination be publick benefit, it ought not to be altered; for there could be no greater evil, than the instability of a constitution perpetually vibrating with every accidental change in any of its constituent parts. If the people drink the waters of happiness, they should prize the fountain from which they flow. And

Is it to be informed what provocation or rational purpose should induce a wish in the people to abolish this parliament, or alter the principles of its institution? Is it to get another parliament to undo what we have done this session? or what we have been doing for these last twelve years?—Is it to repeal the laws of this session, that have united the people of all persuasions in one common interest? Is it to repeal the law of this session, that has confided the defence of the nation to the property of the nation? Is it to repeal the law, that has conceded the royal prerogative to the freedom of parliament; or that which has made an offering of the hereditary revenue of the king to the relief of the people?

Is it to appeal to a spirit different from that which has animated the present parliament, and distinguished this session above all others by acts of real and substantial reform?—A reform that is not innovation, but assimilation—assimilation of our government to that of Great Britain—a reform that does not affect to new model the venerable fabrick of our constitution, but to form a barrier around it, to protect it against the approaches of future abuse; to make it permanent, as it makes it pure; by restraining prodigality, and placing bounds to the power of the crown?—Or, is it to renounce the acquisitions of 1782, your free trade—your free constitution—your Habeas Corpus—your repeal of Poignings, or your judge's bill? Or is it to repeal that code of laws, which have in a few years spread agriculture and manufactures, and commerce through the land? No! sir, it is all a restless spirit and popular delusion. It is that delusion which would sacrifice benefits that are substantial, to speculations that are visionary. It is a delusion, like that which transported the merchant Abudah (in the Tales of the Genii) to abandon his palaces of silver and his temples of gold; the comforts of his affluence, and the raptures of his seraglio; to set out on a pilgrimage in search of the *talisman of Orasmenes*; because he was told that the voice of the people from the banks of the Tigris to the Euphrates resounded the

praises of the talisman of Orasmenes; although of the admiring multitude not one of them had ever beheld it—although they differed in their opinions concerning its properties and its powers—although they knew not whether it was made of the gold of Ormus, or the cedar of Lebanon, or a branch of the Feitch tree that grows on the burning sands, out of which the natives carve their own gods. But some restless genii had whispered in their ears, “that the talisman of Orasmenes would make every one of the people as powerful as the sultan himself.”

I shall leave the merchant Abudah, after his fruitless search, to console himself in his disappointment, by resuming that industry which had produced his former wealth; and embracing those laws, by whose benignity it had been protected. And if I might presume to address, in the voice of authority, my countryman, engaged, as he is, in as vain a pursuit, I would say to him, in the sacred words: “Go thou and do likewise.”

## MR. CURRAN'S SPEECH,

IN THE CAUSE OF THE KING AGAINST THE HON. MR. JUSTICE JOHNSON, IN THE COURT OF EXCHEQUER.—DUBLIN, FEBRUARY 4TH. 1805.

THE speech that follows, we are inclined to believe, as well from internal evidence, as from information we have received, was prepared for the press by Mr. Curran, and that it is, perhaps, the only one of the collection, given to the publick, which has had the advantage of his *careful revision*.

When compared with the rest of his eloquent productions, it will be found to be peculiarly distinguished by those lighter beauties, and delicate embellishments which the most dexterous reporter can neither retain, nor supply, and to have an integrity of composition, and a neatness of finish that attest, with certainty, its genuineness.

This we consider to be decidedly the best of Mr. Curran's speeches hitherto published. Equally sparkling with the gems of his luxuriant fancy, and to profusion affluent of classical ornament, it lays an indisputable claim to more technical precision in its legal statements, and to a closer chain of logical deduction, and consecutive reasoning than is to be seen in any of his other pleadings.

The history of the case, which produced it, may be briefly told.

Not long after the rebellion in Ireland, of 1803, a series of essays appeared in Cobbett's Political Register, at that time an opposition journal in London, conducted with unusual ability, which endeavoured

to prove that the recent commotions, and existing discontents, of the people in that country, grew out of the *corrupt, profligate, and violent administration of lord Hardwicke*. They reflected, too, with great severity on the character and conduct of some of the principal officers of the Irish government.

The honourable Mr. Johnson, one of the judges of the court of Common Pleas in Ireland, having been detected as the author of these libellous publications, was indicted at Westminster. The indictment being found, he was arrested and confined under a warrant issued by lord Ellenborough, chief justice of the *King's Bench, in England*.

The return to a habeas corpus granted him by the court of *Exchequer of Ireland*, stated, that the authority for the arrest was the warrant above mentioned, which was founded on an act of the imperial parliament passed in the year 1804, entitled "an act to render more easy the apprehending and bringing to trial offenders, escaping from one part of the united kingdom to another, &c."

It was on the construction of the fourth section of the act, which is annexed, that the argument in the court of Exchequer arose.

"And, for remedy of the like inconveniency by the escape into *Ireland*, of persons guilty of crimes in *England or Scotland* respectively, be it further enacted, that, from and after the 1st day of *August*, 1804, if any person or persons against whom a warrant shall be issued by any of the judges of his majesty's court of king's bench, or of the courts of great sessions in *Wales*, or any justice of oyer and terminer or goal delivery, or any justice or justices of the peace of any county, stevertry, riding, division, city, liberty, town, or place, within *England or Scotland* respectively, or other persons having authority to issue the same within *England or Scotland* respectively, for any crime or offence against the laws of *England or Scotland* respectively, shall escape, go into, reside, or be in any place of that part of the united kingdom called *Ireland*, it shall and may be lawful for any justice of the peace of the county or place in *Ireland*, whither or where such person or persons shall escape, go into, or reside, or be, to endorse his name on such warrant, which warrant so endorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all sheriffs' officers, constables, and other peace

officers of the county or place, in *Ireland*, where such warrant shall be so endorsed, to execute the said warrant in the county or place, in *Ireland*, where it is so endorsed, by apprehending the person or persons against whom such warrant may be granted, and to convey him, her, or them, by the most direct way into *England* or *Scotland* respectively, and before one of the justices of peace of the county or stewartry, in *England* or *Scotland* respectively, living near the place and in the county where he, she, or they shall arrive and land, which justice of peace is hereby authorized and required to proceed with regard to such person or persons as if such person or persons had been legally apprehended in the said county or stewartry of *England* or *Scotland* respectively."

What was the decision of the court, in this case, we have not been able to ascertain. The subject, we recollect, was afterwards brought before parliament by the late Mr. Fox, and it is presumable, therefore, that the decision was unfavourable to Mr. Curran's client. By a sort of compromise with the government, judge Johnson finally retired from the bench, on a pension. But Mr. Cobbett, the publisher of the essays in question, was tried, and convicted of a libel, not only on Lord Hardwicke, but also on Mr. Plunket, the attorney general, and lord Redesdale, the chancellor of Ireland.

### SPEECH, &c.

MY LORDS,

IT has fallen to my lot, either fortunately, or unfortunately, as the event may be, to rise as counsel for my client on this most important and momentous occasion. I appear before you, my lords, in consequence of a writ issued by his *majesty*, commanding that cause be shown to this his *court* why his *subject* has been deprived of his *liberty*, and upon the cause shown in obedience to this writ, it is my duty to address you on the most awful question, if awfulness is to be judged by consequences and events, on which you have been *ever* called upon to decide. Sorry am I that the task has not been confided to more adequate powers; but, feeble as they are, they will at least not shrink from it. I move you, therefore, that Mr. Justice Johnson be released from illegal imprisonment.

I cannot but observe the sort of scenick preparation with which this sad drama is sought to be brought forward. In part I approve it. In part it excites my *disgust* and *indignation*. I am glad to find that the attorney and solicitor general, the natural and official prosecutors for the state do not appear; and I infer from the absence, that his excellency, the lord lieutenant, disclaims any personal concern in this execrable transaction. I think it does him much honour; it is a conduct that equally agrees with the dignity of his character and the feelings of his heart. To his private virtues, whenever he is left to their influence, I willingly concur in giving the most unqualified tribute of respect. And I do firmly believe, it is with no small regret that he suffers his name to be even formally made use of, in avowing for a return of one of the judges of the land with as much indifference and *non chalence* as if he were a beast of the plough. I observe too, the dead silence into which the publick is frowned, by authority, for the sad occasion. No man dares to mutter; no newspaper dares to whisper that such a question is afloat. It seems an inquiry among the tombs, or rather in the shades beyond hem.

*Ibant solâ sub nocte per umbram.*

I am glad it is so—I am glad of this factitious dumbness; for if murmurs dared to become audible, my voice would be too feeble to drown them; but when all is hushed—when nature sleeps—

*Cum quies mortalibus ægris.*

The weakest voice is heard—the shepherd's whistle shoots across the listening darkness of the interminable heath, and gives notice that the wolf is upon his walk; and the same gloom and stillness that tempt the monster to come abroad, facilitate the communication of the warning to beware. Yes, through that silence the voice shall be heard; yes, through that silence, the shepherd shall be put upon his guard; yes, through that silence shall the felon savage be chased into the toil. Yes, my lords, I feel myself cheered and impressed by the composed and digni-

fixed attention with which I see you are disposed to hear me on the most important question that has ever been subjected to your consideration; the most important to the dearest rights of the human being; the most deeply interesting and animating that can beat in his heart, or burn upon his tongue.—Oh! how recreating is it to feel that occasions may arise in which the soul of man may reassume her pretensions; in which she hears the voice of nature whisper to her, *as homini sublime dedi cœlumque tueri*; in which even I can look up with calm security to the court, and down with the most profound contempt upon the reptile I mean to tread upon! I say reptile; because, when the proudest man in society becomes so the dupe of his childish malice, as to wish to inflict on the object of his vengeance the poison of his sting; to do a reptile's work, he must shrink into a reptile's dimensions; and so shrunk, the only way to assail him is to tread upon him. But to the subject:—this writ of habeas corpus has had a return. That return states, that lord Ellenborough, chief justice of England, issued a warrant reciting the foundation of this dismal transaction: that *one* of the clerks of the crown office had certified to him, that an indictment had been found at Westminster, charging the honourable Robert Johnson, late of Westminster, one of the justices of his majesty's court of common pleas in Ireland, with the publication of certain slanderous libels against the government of that country; against the person of his excellency lord Hardwicke, lord lieutenant of that country; against the person of lord Redesdale, the chancellor of Ireland; and against the person of Mr. Justice Osborne, one of the justices of the court of king's bench in Ireland. One of the clerks of the crown office, it seems, certified all this to his lordship. How many of these there are, or who they are, or which of them so certified, we cannot presume to guess, because the learned and noble lord is silent as to those circumstances. We are only informed that one of them made that important communication to his lordship. It puts me in mind of the information



given to one of Fielding's justices: "did not," says his worship's wife, "the man with the wallet make his *fidavy* that you was a *vagrum*?" I suppose it was some such petty bag officer who gave lord Ellenborough to understand that Mr. Justice Johnson was indicted. And being thus given to understand, and being informed, he issued his warrant to a gentleman, no doubt of great respectability, a Mr. Williams, his tipstaff, to take the body of Mr. Justice Johnson, and bring him before a magistrate, for the purpose of giving bail to appear within the first eight days of the term, so that there might be a trial within the sitting after; and if, by the blessing of God, he should be convicted, then to appear on the return of the *passet*, to be dealt with according to law.

Perhaps it may be a question for you to decide, whether that warrant, such as it may be, is not now absolutely spent; and, if not, how a man can contrive to be hereafter in England on a day that is past? And high as the opinion may be in England of Irish understanding, it will be something beyond even Irish exactness to bind him to appear in England not a fortnight hence, but a fortnight ago.—I wish, my lords, we had the art of giving time this retrograde motion. If possessed of the secret, we might possibly be disposed to improve it from fortnights into years.

There is something not incurious in the juxtaposition of signatures. The warrant is signed by the chief justice of all England.—In music, the ear is reconciled to strong transitions of key by a preparatory resolution of the intervening discords; but here, alas! there is nothing to break the fall: the august title of Ellenborough is followed by the unadorned name of brother Bell, the sponsor of his lordship's warrant. Let me not, however, be suffered to deem lightly of the compeer of the noble and learned lord. Mr. Justice Bell ought to be a lawyer; I remember him myself long a crier,\* and I know his credit

\* This gentleman was formerly crier to the late baron Hamilton, when the baron went circuit as a judge.

with the state; he has had a *noli prosequi*. I see not therefore why it may not fairly be said "*fortunati ambo!*" It appears by this return, that Mr. Justice Bell indorses this bill of lading to another consignee; Mr. Medlicot, a most respectable gentleman; he describes himself upon the warrant, and he gives a delightful specimen of the administration of justice, and the calendar of saints in office; he describes himself a justice and a peace officer—that is, a magistrate and a catchpole; so that he may receive information as a justice; if he can write, he may draw them as a clerk; if not, he can execute the warrant as bailiff; and, if it be a capital offence, you may see the culprit, the justice, the clerk, the bailiff, and the hangman, together in the same cart; and, though he may not write, he may "ride and tie!" What a pity that their journey should not be further continued together! That, as they had been "lovely in their lives, so in their deaths they might not be divided!" I find, my lords, I have undesignedly raised a laugh; never did I less feel merriment.—Let not me be condemned—let not the laugh be mistaken.—Never was Mr. Hume more just than when he says, that "in many things the extremes are nearer to one another than the means." Few are those events that are produced by vice and folly, that fire the heart with indignation, that do not also shake the sides with laughter. So when the two famous moralists of old beheld the sad spectacle of life, the one burst into laughter, the other melted into tears; they were each of them right, and equally right.

Si credas utrique  
Res sunt humanæ flebile ludibrium.

But these laughs are the bitter ireful laughs of honest indignation,—or they are the laughs of hec tick melancholy and despair.

It is stated to you, my lords, that these two justices, if justices they are to be called, went to the house of the defendant. I am speaking to judges, but I disdain the paltry insult it would be to them, were I to appeal to any wretched sympathy of situation. I feel

I am above it. I know the bench is above it. But I know, too, that there are ranks, and degrees, and decorums to be observed; and, if I had a ~~harsh~~ communication to make to a venerable judge, and a similar one to his crier, I should certainly address them in a very different language indeed. A judge of the land, a man not young, of infirm health, ~~his~~ the sanctuary of his habitation broken open by ~~these~~ two persons, who set out with him for the coast, to drag him from his country, to hurry him to a strange land by the "most direct way!" till the king's will stopt the malefactors, and left the subject of the king a waif dropt in the pursuit.

Is it for nothing, my lords, I say this? Is it without intention, I state the facts in this way? It is with every intention. It is the duty of the publick advocate not so to put forward the object of publick attention, as that the skeleton only shall appear, without flesh, or feature, or complexion. I mean every thing that ought to be meant in a court of justice. I mean not only that this execrable attempt shall be intelligible to the court as a matter of *law*, but shall be understood by the world as an act of *state*. If advocates had always the honesty and the courage, upon occasions like this, to despise all personal considerations, and to think of no consequence but what may result to the publick from the faithful discharge of their sacred trust, these phrenetick projects of power, these atrocious aggressions on the liberty and happiness of men, would not be so often attempted; for, though a certain class of delinquents may be screened from punishment, they cannot be protected from hatred and derision. The great tribunal of reputation will pass its inexorable sentence upon their crimes, their follies, or their incompetency; they will sink themselves under the consciousness of their situation; they will feel the operation of an acid so neutralizing the malignity of their natures, as to make them at least harmless, if it cannot make them honest. Nor is there any thing of risk in the conduct I recommend. If the fire be hot, or the window cold, turn

not your back to either ; turn your face. So, if you are obliged to arraign the acts of those in high station, approach them not with malice, nor favour, nor fear. Remember, that it is the condition of guilt to tremble, and of honesty to be bold ; remember, that your false fear can only give them false courage :—that while you nobly avow the cause of truth, you will find her shield an impenetrable protection ; and that no attack can be either hazardous or inefficient, if it be just and resolute. If Nathan had not fortified himself in the boldness and directness of his charge, he might have been hanged for the malice of his parable.

It is, my lords, in this temper of mind, befitting every advocate who is worthy of the name, deeply and modestly sensible of his duty, and proud of his privilege, equally exalted above the meanness of temporizing or of offending, most averse from the unnecessary infliction of pain upon any man or men whatsoever, that I now address you on a question, the most vitally connected with the liberty and well-being of every man within the limits of the British empire ; which, if decided one way, he may be a freeman ; which, if decided the other, he must be a slave. It is not the Irish nation only that is involved in this question. Every member of the three realms is equally embarked : and would to God all England could listen to what passes here this day ! they would regard us with more sympathy and respect, when the proudest Briton saw that his liberty was defended in what he would call a provincial court, and by a provincial advocate. The abstract and general question for your consideration is this : my lord Ellenborough has signed with his own hand a warrant, which has been indorsed by Mr. Bell, an Irish justice, for seizing the person of Mr. justice Johnson in Ireland, for conveying his person by the most direct way, in such manner as these bailiffs may choose, across the sea, and afterwards to the city of Westminster, to take his trial for an alleged libel against the persons intrusted with the government of Ireland, and to take

that trial in a country where the supposed offender did not live at the time of the supposed offence, nor since a period of at least eighteen months previous thereto, has ever resided; where the subject of his accusation is perfectly unknown; where the conduct of his prosecutors, which has been the subject of the supposed libel, is equally unknown; where he has not the power of compelling the attendance of a single witness for his defence. Under that warrant he has been dragged from his family: under that warrant he was on his way to the water's edge; his transportation has been interrupted by the writ before you, and upon the return of that writ arises the question upon which you are to decide, the legality or illegality of so transporting him for the purpose of trial. I am well aware, my lords, of the limits of the present discussion; if the law was clear in favour of the prosecutors, a most momentous question might arise—how far they may be delinquents in daring to avail themselves of such a law for such a purpose?—but I am aware that such is not the present question; I am aware that this is no court of impeachment; and therefore that your inquiry is not whether such a power hath been criminally used, but whether it doth in fact exist. The arrest of the defendant has been justified by the advocates of the crown under the forty fourth of his present majesty. I have had the curiosity to inquire into the history of that act, and I find, that in the month of May, 1804, the brother-in-law of one of the present prosecutors obtained leave to bring in a bill to “render more easy the apprehending and bringing to trial offenders escaping from one part of the united kingdom to another, and also from one county to another,” that bill was brought in; it travelled on in the caravan of legislation unheeded and unnoticed, retarded by no difficulties of discussion or debate, and in due fulness of season it passed into a law, which was to commence from and after the first of August, 1804. This act, like a young Hercules, began its exploits in the cradle. In the November following the present warrant was issued,

under its supposed authority. Let me not be understood to say that the act has been slid through an unsuspecting legislature, under any particular influence; or for any particular purpose: that any such man could be found, or any such influence exist; or any such lethargy prevail, would not, perhaps, be decent to suppose; still less do I question the legislative authority of parliament. We all know that a parliament may attain itself; and that its omnipotence may equally extend in the same way to the whole body of the people. We know also that most unjust and cruel acts of attainder have been obtained by corrupt men in bad times; and if I could bring myself to say, which I do not, that this act was contrived for the mere purpose of destroying an obnoxious individual, I should not hesitate to call it the most odious species of attainder that could be found upon the records of legislative degradation; because, for the simple purpose of extinguishing an individual, it would sweep the liberty of every being in the state into the vortex of general and undistinguishing destruction. But these are points of view upon which the minds of the people of Ireland and England may dwell with terror, or indignation, or apathy, according as they may be fitted for liberty or for chains; but they are not points for the court: and so I pass them by. The present arrest and detention are defended under the forty-fourth of the king: are they warranted by that act? That is the only question for you to decide; and you will arrive at that decision in the usual course, by inquiring, first, how the law stood before upon the subject; next, what the imperfection or grievance of that law was; and thirdly, what the remedy intended to be applied by the act in question.

First, then, how stood the law before?—Upon this part it would be a parade of useless learning to go further back than the statute of Charles, the habeas corpus act, which is so justly called the second magna charta of British liberty: what was the occasion of that law? the arbitrary transportation of the sub-

ject beyond the realm; that base and malignant war, which the odious and despicable minions of power are for ever ready to wage against all those who are honest and bold enough to despise, to expose, and to resist them. Such is the oscurancy of man, that he lies torpid for ages under these aggressions, until at last some signal abuse, the violation of Lucretia, the death of Virginia, the oppression of William Tell, shake him from his slumber. For years had those drunken gambols of power been played in England; for years had the waters of bitterness been rising to the brim; at last a single drop caused them to overflow; the oppression of a single individual called the people of England from their sleep; and what does that great statute do? It defines and asserts the right, it points out the abuse, and it endeavours to secure the right, and to guard against the abuse, by giving redress to the sufferer, and by punishing the offender; for years had it been the practice to transport obnoxious persons out of the realm into distant parts, under the pretext of punishment or of safe custody. Well might they have been said to be sent "to that undiscovered country from whose bourne no traveller returns," for of these wretched travellers how few ever did return? But of that flagrant abuse this statute has laid the axe to the root; it prohibits the abuse; it declares such detention or removal illegal; it gives an action against all persons concerned in the offence, by contriving, writing, signing, counter-signing such warrant, or advising or assisting therein. That you may form a just estimate of the rights which were to be secured, examine the means by which their infringement was in future to be prevented and punished. The injured party has a civil action against the offenders; but the legislature recollected that the sneaking unprincipled humility of a servile packed jury, might do homage to ministerial power by compensating the individual with nominal damages. The statute does that, of which I remember no other instance. It leaves the jury at liberty to give damages to any extent, above

five hundred pounds, but expressly forbids them to find a verdict of damages below it. Was this sufficient?—No.—The offenders incur a præmunire. They are put out of the king's protection; they forfeit their lands and goods; they are disabled from bearing any office of trust or profit. Did the statute stop there? The legislature saw in their prospective wisdom, that the profligate favourite who had committed treason against the king by the oppression of his subjects, might acquire such a dominion over the mind of his master, as by the exertion of prerogative to interrupt the course of justice and prevent the punishment of his crime.—The king cannot pardon.—Are bulwarks like these ever constructed to repel the incursions of a contemptible enemy? Was it a trivial and ordinary occasion which raised this storm of indignation in the parliament of that day? Is the ocean ever lashed by the tempest to waft a feather or to drown a fly? Thus, haughtily and jealously, does this statute restrain the abuses that may be committed against the liberty of the subject by the judge, the jury or the minister. One exception, and one exception only, does it contain:—It excepts from its protection by the sixteenth section, persons who may have committed any "capital offence" in Scotland or Ireland. If the principle of that exception were now open to discussion, sure I am that much might be said against its policy. On the one side you would have to consider the mischief of letting this statute protect a capital offender from punishment, by prohibiting his transmission to that jurisdiction where his crime was committed, and where alone he could be tried. On the other, you would have to weigh the danger to be feared from the abuse of such a power, which, as the habeas corpus act stood, could not be resorted to in any ordinary way; but was confined to the sole and exclusive exercise of the advisers of the prerogative. You would have to consider, whether it was more likely that it would be used against the guilty or the obnoxious; whether it was more likely to be used



as an instrument of justice against the bad, or a pretext of oppression against the good ; and finally, whether you might not apply to the subject the humane maxim of our law—that better it is that one hundred guilty men should escape, than that one innocent, and, let me add, meritorious man, should suffer. But our ancestors have considered the question ; they have decided ; and, until we are better satisfied than I fear we can be, that we have not degenerated from their virtue, it can scarcely become us to pass any light or hasty condemnation upon their wisdom. In this great statute, then, my lords, you have the line of demarcation between the prerogative and the people, as well as between the criminal law and the subject, defined with all the exactness, and guarded by every precaution that human prudence could devise. Wretched must that legislature be, whose acts you cannot trace to the first unchangeable principles of rational prerogative, of civil liberty, of equal justice ! In this act you trace them all distinctly. By this act you have a solemn legislative declaration, “ that it is incompatible with liberty to send any subject out of the realm, under pretence of any crime supposed or alleged to be committed in a foreign jurisdiction, except that crime be capital.” Such were the bulwarks which our ancestors drew about the sacred temple of liberty—such the ramparts by which they sought to bar out the ever toiling ocean of arbitrary power ; and thought (generous credulity !) that they had barred it out from their posterity for ever. Little did they foresee the future race of vermin that would work their way through those mounds, and let back the inundation ; little did they foresee that their labours were so like those frail and transient works that threatened for a while the haughty crimes and battlements of Troy, but so soon vanished before the force of the trident and the impulse of the waters ; or that they were still more like the forms which the infant’s finger traces upon the beach ; the next breeze, the next tide—

them, and confounds them with the barren undistinguished strand. The ill-omened bird that lights upon it, sees nothing to mark, to allure, or to deter, but finds all one obliterated unvaried waste,

*Et sola secum sicca spatatur arena.*

Still do I hope that this sacred bequest of our ancestors will have a more prosperous fortune, and be preserved by a more religious and successful care, a polar star to the wisdom of the legislator, and the integrity of the judge.

As such will I suppose its principle not yet brought into disgrace; and as such with your permission will I still presume to argue upon that principle.

So stood the law till the two acts of the twenty-third and twenty-fourth of George II. which relate wholly to cases between county and county in England. Next followed the act of the thirteenth of his present majesty, which was merely a regulation between England and Scotland. And next came the act of the forty-fourth of the present reign, upon which you are now called on to decide, which as between county and county is an incorporation of the two acts of George II. and as between England, Scotland, and Ireland, is nearly a transcript of the thirteenth of the king.

Under the third and fourth section of this last act, the learned counsel for the learned prosecutors (for, really, I think it only candid to acquit the lord lieutenant of the folly or the shame of this business, and to suppose that he is as innocent of the project from his temper, as he must from his education be ignorant of the subject) endeavour to justify this proceeding. The construction of this act they, broadly and expressly, contend to be this:—first, they assert that it extends not only to the higher crimes, but to all offences whatsoever:—secondly, that it extends not only to persons who may have committed offences within any given jurisdictions, and afterwards escaped or gone out of such jurisdictions, but to all persons, whether so escaping or going out or not:—thirdly, that it extends to constructive offences, that is, to of-

fences committed against the laws of certain jurisdictions, committed in places not within them, by persons that never put their feet within them, but by construction of law committing them within such jurisdictions, and, of course, triable therein:—fourthly, that it extends peculiarly to the case of libels against the persons entrusted with the powers of government, or with offices in the state:—and, fifthly, that it extends not only to offences committed after the commencement of the act, but also to offences at any period, however remotely, previous to the existence of the statute; that is, that it is to have an *ex post facto* operation. The learned prosecutors have been forced into the necessity of supporting these last monstrous positions, because upon the return to the writ, and upon the affidavits it appears, and has been expressly admitted in the argument:—first, that the supposed libel upon these noble and learned prosecutors relates to the unhappy circumstances that took place in Ireland, on the twenty-third of July, 1803, and of course must have been published subsequent thereto:—and secondly, that Mr. Justice Johnson from the beginning of 1802 to the present hour was never for a moment in England but was constantly resident in Ireland; so that his guilt, whatever it be, must arise from some act, of necessity, committed in Ireland, and by no physical possibility committed or capable of being committed in England: these are the positions upon which a learned chancellor and a learned judge come forward to support their cause and to stake their character, each in the face of his country, and both in the face of the British empire; these are the positions, which, thank God, it belongs to my nature to abhor, and to my education to despise, and which it is this day my most prompt and melancholy duty to refute and to resist—most prompt in obeying; most grieved at the occasion that calls for such obedience.

We must now examine this act of the forty-fourth of the king, and in doing so I trust you will seek some nobler assistance than can be found in the prin-

ciples or the practice of day-rules or side-bar motions; something more worthy a liberal and learned court, acting under a religious sense of their duty to their king, their country, and their God, than the feeble and pedantick aid of a stunted verbal interpretation straining upon its tiptoe to peep over the syllable that stands between it and meaning. If your object was merely to see if its words could be tortured into a submission to a vindictive interpretation, you would have only to endorse the construction that these learned prosecutors have put upon it, and that with as much grave deliberation as Mr. Justice Bell has vouchsafed to endorse the warrant which my lord Ellenborough has thought fit to issue under its authority. You would then have only to look at it, *ut leguleius quidam cautus atque acutus, præcentor*.

Lord Avonmore. No, Mr. Curran, you forget, it is not *præcentor*, it is *leguleius quidam cautus atque acutus, præco actionum cantor formarum auceps syllabarum*.

Mr. Curran. I thank you my lord for the assistance; and I am the more grateful, because, when I consider the laudable and successful efforts that have been made of late, to make science domestick and familiar, and to emancipate her from the trammels of scholarship, as well as the just suspicion under which the harbourers and abettors of those outlawed classics have fallen, I see at what a risk you have ventured to help me out. And yet see, my lord, if you are prudent in trusting yourself to the honour of an accomplice. Think, should I be prosecuted for this misprision of learning, if I could resist the temptation of escaping by turning evidence against so notorious a delinquent as you, my good lord, and so confessedly more criminal than myself, or, perhaps, than any other man in the empire.\*

To examine this act then, my lords, we must revert to the three English statutes of which it is a

\* Lord Avonmore may be justly ranked among the first classical scholars in either Ireland or England. They who know him, know this.

transcript. The first of these is the twenty-third of George II. cap. 26. sect. 11.

So much of the title as relates to our present inquiry is "for the apprehending of persons in any county or place, upon warrants granted by justices of the peace in any other county or place."

See now sect. 11. that contains the preamble and enactment as to this subject:—

"And whereas it frequently happens that persons, against whom warrants are granted by justices of the peace for the several counties within this kingdom, escape into other counties or places out of the jurisdiction of the justices of the peace granting such warrants, and thereby avoid being punished for the offences wherewith they are charged:" 'For remedy whereof, be it enacted by the authority aforesaid, that from and after the twenty-fourth day of June, one thousand seven hundred and fifty, in case any person against whom a legal warrant shall be issued, by any justice or justices of the peace for any county, riding, division, city, liberty, town, or place within this kingdom, shall escape or go into any other county, riding, division, city, liberty, town or place out of the jurisdiction of the justice or justices granting such warrant as aforesaid, it shall and may be lawful for any justice of the peace of the county, riding, division, city, liberty, town, or place, to which such person shall have gone or escaped, to endorse such warrant, upon application made to him for that purpose, and to cause the person against whom the same shall have been issued to be apprehended and sent to the justice or justices who granted such warrant, or to some other justice or justices of the county, riding, division, city, liberty, town, or place from whence such person shall have gone or escaped, to the end that he or she may be dealt with according to law, any law or usage to the contrary notwithstanding.'

This act was amended by the twenty-fourth of the same reign, the title of which was, "An act for amending and making more effectual a clause in an act passed in the last session of parliament, for the

apprehending of persons in any county or place upon warrants granted by justices of the peace of any other county or place."

It then recites the 11th section of the twenty-third of George II. and proceeds, "And whereas such offender or offenders may reside or be in some other county, riding, division, city, liberty, town or place out of the jurisdiction of the justice or justices granting such warrant, as aforesaid, before the granting such warrant, and without escaping or going out of the county, riding, division, city, liberty, town or place after such warrant granted."

I shall reserve a more particular examination of these two acts for that head of my argument that shall necessarily require it. At present I shall only observe; first, that they are manifestly prospective; secondly, that they operate only as between county and county in England; thirdly, that they clearly and distinctly go to all offenders whatsoever, who may avoid trial and punishment of their offences by escaping from the jurisdiction in which they were committed, and were, of course, triable and punishable; and fourthly, that provision is made for bailing the persons so arrested in the place where taken, if the offences charged upon them were bailable by law.

In the thirteenth of his present majesty, it was thought fit to make a law with respect to criminals escaping from England to Scotland, and *vice versa*: of that act the present statute of the forty-fourth is a transcript. And upon this statute arises the first question made by the prosecutors; namely, whether like the acts of the twenty-third and twenty-fourth of George II. which were merely between county and county, it extended indiscriminately to the lowest as well as the highest offences? or whether the thirteenth and forty-fourth, which go to kingdom and kingdom, are not confined to some, and to what particular species of offences? The preamble to these two statutes, so far as they bear upon our present question, is contained in the third section of the forty-fourth, the act now under consideration. And there is not a word in

it that is not most material. It says, "Whereas, it may frequently happen that felons and other malefactors in Ireland may make their escape into Great Britain, and also that felons and other malefactors in Great Britain may make their escape into Ireland, whereby their crimes remain unpunished." There being no sufficient provision by the laws now in force in Great Britain and Ireland respectively for apprehending such offenders and transmitting them into that part of the united kingdom in which their offences were committed. For remedy whereof, &c. and if any person against whom a warrant shall be issued by any justice of the peace in Ireland for any crime or offence against the laws of Ireland, shall escape, go into, reside, or be in any place in England or Scotland, it shall be lawful for any justice of the peace for the place, whither or where such persons shall escape, &c. to endorse his name on such warrant; which warrant so endorsed shall be a sufficient authority to the person bringing it to execute the same by apprehending the person against whom it is granted, and to convey him by the most direct way into Ireland and before a justice living near the place where he shall land, which justice shall proceed with regard to him as if he had been legally apprehended in such county of Ireland. The 4th section makes the same provision for escapes from England or Scotland into Ireland. The statute goes on and directs that the expenses of such removal shall be repaid to the person defraying the same by the treasurer of the county in which the crime was committed, and the treasurer is to be allowed for it in his accounts.

To support the construction that takes in all possible offences of all degrees, you have been told, and upon the grave authority of notable cases, that the enacting part of a statute may go beyond its preamble; that it cannot be restrained by the preamble, and still less by the title; that here the enacting clause was the words "any offence," and that "any offence," must extend to every offence, and of course to the offence in question. If the question had been

of a lighter kind, you might perhaps have smiled at the parade of authorities produced to establish what no lawyer ever thinks of denying. They would have acted with more advantage to the justice of the country, though perhaps not to the wishes of their clients, if they had reminded your lordships, that in the construction of statutes, the preamble and even the title itself may give some assistance to the judge in developing its meaning and its extent; if they had reminded you, that remedial laws are to be construed liberally, and penal laws with the utmost strictness and caution. And when they contend that a supposed libel is within the letter of this law, they would have done well to have added, that it is a maxim that there may be cases within the letter of a statute which, notwithstanding, the judge is bound to reject from its operation as being incompatible with its spirit. They would have done well in adding, that the judge is bound so to construe all laws as not to infringe upon any of the known rules of religion or morality—any of the known rules of distributive justice—any of the established principles of the liberties and rights of the subject—and that it is no more than a decent and becoming deference to the legislator to assume as certain, that whatever words he may have used, he could not possibly have meant any thing that upon the face of it was palpably absurd, immoral, or unjust. These are the principles on which I am persuaded this court will always act, because I know them to be the principles on which every court of justice ought to act. And I abstain studiously from appealing to any judicial decisions in support of them, because to fortify them by precedent or authority would be to suppose them liable to be called in question. There is another rule which I can easily excuse learned gentlemen from adverting to, and that is, that when many statutes are made in *pari materia*, any one of them is to be construed not independently of the others, but with a reference to the entire code of which it is only a component part.



On these grounds then, I say, the forty-fourth was not, and could not be intended to go to all offences whatsoever.

First, because the acts of twenty-third and twenty-fourth of George II. had already described "all persons" by words of the most general and comprehensive kind. If the framers of the thirteenth and forty-fourth meant to carry these acts to the same length, they had the words of the former acts before their eyes, and yet they have used very different words: a clear proof, in my mind, that they meant to convey a very different meaning. In these latter acts they use very singular words—"felons and other malefactors;"—that these words are somewhat loose and indefinite I make no difficulty of admitting; but will any man that understands English deny, that they describe offences of a higher and more enormous degree? You are told, that felon does not necessarily mean a capital offender, because there are felonies not capital, the name being derived from the forfeiture not of life, but of property. You are also told, that "malefactors" means generally an ill-doer, and, in that sense, that every offender is a malefactor: but the thirteenth and forty-fourth state this class to be felons and malefactors, for whose transmission from kingdom to kingdom "no sufficient provision was made by the laws now in force." Now I think it is not unfair reasoning to say, that this act extends to a class of offenders whose transmission was admitted to be not incompatible with the just liberty of the subject of England; but for whose transmission the legislature could not say there was no provision; but for whose transmission it was clear that there was not a sufficient provision, though there was some provision. If you can find any class so circumstanced, that is, exclusively liable by law to be so transmitted, the meaning of the words "felons and other malefactors," becomes fixed, and must necessarily refer to such class.

Now that class is expressly described in the habeas corpus act, because it declares the transmission of all persons to be illegal, except only persons charged

with capital crimes ; for their apprehension and transmission there was a provision, the *mandatum regis* ; that is, the discretionary exercise of the prerogative. That power had theretofore been used in cases of treason, as in Lundy's case ; so in the case of lord Sanchar ; Carliel, the principal in the murder of Turner, committed in London by the procurement of lord Sanchar, was arrested in Scotland, whither he had fled, by the order of king James I. and brought back to England, where he was executed for the crime, as was lord Sanchar, the accessory before the fact ; but such interference of the prerogative might be granted or withheld at pleasure, could be applied for only with great difficulty and expense ; and therefore might well be called an insufficient provision. No provision for such a purpose can be sufficient, unless, instead of depending on the caprice of men in power, it can be resorted to in the ordinary course of law. You have, therefore, my lords, to elect between two constructions ; one, which makes an adequate provision for carrying the exception in the sixteenth section of the habeas corpus act into effect ; and the other, a complete and radical repeal of that sacred security for the freedom of Englishmen.—But further, the spirit and the letter of the habeas corpus law is, that the party arrested shall, without a moment's delay, be bailed, if the offence be bailable ; but if misdemeanors are within this act, then an English subject, arrested under an Irish warrant, cannot be bailed within any part of the realm of England, but must be carried forward, in the custody of Irish bailiffs, to the sea shore of his country, where he is to be embarked in such vessel as they think proper ; and, if it should be the good pleasure of his guardians to let him land alive in any part of Ireland, then, and not till then, may he apply to an Irish justice to admit him to bail in a foreign country, where he is a perfect stranger, and where none but an idiot could expect to find any man disposed to make himself responsible for his appearance. Can you,

my lords, bring your minds easily to believe that such a tissue of despotism and folly could have been the sober and deliberate intention of the legislature? But further, under the acts of George II. even from one county to the next, the warrant by the first justice must be authenticated upon oath, before it can be endorsed by the second; but, in this act, between, perhaps, the remotest regions of different kingdoms, no authentication is required; and, upon the endorsement of perhaps, a forged warrant, which the English justice has no means of inquiring into, a British subject is to be marched through England, and carried over sea to Ireland, there to learn in the county of Kerry, or Galway, or Derry, that he had been torn from his family, his friends, his business, to the annihilation of his credit, the ruin of his affairs, the destruction of his health, in consequence of a mistake, or a practical joke, or an inhuman or remorseless project of vindictive malice; and that he is then at liberty to return, if he is able; that he may have a good action at law against the worthy and responsible bailiff that abused him, if he is foolish enough to look for him, or unfortunate enough to find him. Can you, my lords, be brought seriously to believe, that such a construction would not be the foulest aspersion upon the wisdom and justice of the legislature?

I said, my lords, that an Englishman may be taken upon the endorsement of a forged warrant. Let me not be supposed such a simpleton as to think that the danger of forgery makes a shade of difference in the subject. I know too well that calendar of saints, the Irish justices; I am too much in the habit of prosecuting and defending them every term and every commission, not to be able to guess at what price a customer might have real warrants by the dozen; and, without much sagacity, we might calculate the average expense of their endorsement at the other side of the water.—But, further yet, the act provides that the expense of such transmission shall be paid, at the end of the journey, by the place where the crime has been

committed—but, who is to supply the expenses by the way? What sort of prosecutors do you think the more likely to advance those expenses, an angry minister, or a vindictive individual?—I can easily see that such a construction would give a most effectual method of getting rid of a troublesome political opponent; or a rival in trade; or a rival in love; or of quickening the undutiful lingering of an ancestor that felt not the maturity of his heir; but I cannot bring myself to believe that a sober legislature, when the common rights of humanity seem to be beaten into their last entrenchment, and to make their last stand, I trust in God a successful one, in the British empire, would choose exactly that awful crisis for destroying the most vital principles of common justice and liberty, or of showing to these nations that their treasure and their blood were to be wasted in struggling for the noble privilege of holding the right of freedom, of habitation, and of country, at the courtesy of every little irritable officer of state, or of our worshipful Rivets, and Bells, and Medicots, and their trusty and well beloved cousins and catchpoles.

But, my lords, even if the prosecutor should succeed, which, for the honour and character of Ireland, I trust he cannot, in wringing, from the bench an admission that all offences whatsoever are within this act, he will have only commenced his honourable cause, he will only have arrived at the vestibule of atrocity. He has now to show that Mr. Johnson is within the description of a malefactor, making his escape into Ireland, whereby his offence may remain unpunished, and liable to be arrested under a warrant endorsed in that place whither or where such person shall escape, go into, reside, or be. For this inquiry you must refer to the twenty-third and twenty-fourth George II. The first of these, twenty-third, c. 11, recites the mischief—"that persons against whom warrants are granted *escape* into other counties, and thereby avoid being punished."—The enacting part then gives the remedy:—"the justice for the place into which *such* person shall have gone or escaped,

shall endorse the original warrant, and the person accused shall thereunder be sent to the justice who granted it, to be by him dealt with, &c.

If words can be plain, these words are so—they extend to persons actually committing crimes within a jurisdiction, and actually escaping into some other after warrant granted, and thereby avoiding trial.—In this act there were found two defects: first, it did not comprehend persons changing their abode before warrant issued, and whose removing, as not being a direct flight from pursuit, could scarcely be called an escape; secondly, it did not give the second justice a power to bail.—And here you see how essential to justice it was deemed, that the person arrested should be bailed on the spot and the moment of arrest, if the charge was bailable.

Accordingly, the twenty-fourth of George II. cap. 55, was made:—After reciting the former act, and the class of offenders thereby described, namely, actual offenders actually escaping, it recites that “whereas *such offenders* may reside or be in some other county before the warrant granted, and without escaping or going out of the county after such warrant granted,” it then enacts, “that the justice for such place where such person shall escape, go into, reside, or be, shall endorse, &c. and may bail if bailable, or transmit, &c.

Now the construction of these two acts taken together is manifestly this: it takes in every person who being in any jurisdiction, and committing an offence therein, escaping after warrant, or without escaping after warrant, going into some other jurisdiction, and who shall there *reside*, that is permanently abide, or *shall* be, that is not permanently, so as to be called a resident.

Now, here it is admitted that Mr. Johnson was not within the realm of England since the beginning of 1802, more than a year before the offence existed; and therefore you are gravely called upon to say that he is a person who made his escape *from* a place where he never was, and into a place which he had

committed—but, who is to supply the expenses by the way? What sort of prosecutors do you think the more likely to advance those expenses, an angry minister, or a vindictive individual?—I can easily see that such a construction would give a most effectual method of getting rid of a troublesome political opponent; or a rival in trade; or a rival in love; or of quickening the undutiful lingering of an ancestor that felt not the maturity of his heir; but I cannot bring myself to believe that a sober legislature, when the common rights of humanity seem to be beaten into their last entrenchment, and to make their last stand, I trust in God a successful one, in the British empire, would choose exactly that awful crisis for destroying the most vital principles of common justice and liberty, or of showing to these nations that their treasure and their blood were to be wasted in struggling for the noble privilege of holding the right of freedom, of habitation, and of country, at the courtesy of every little irritable officer of state, or of our worshipful Rivets, and Bells, and Medicots, and their trusty and well beloved cousins and catchpoles.

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that I may have the mortification of being told in another country of that unhappy decision, and I foresee in what confusion I shall hang down my head when I am told it. But I cherish too the consolatory hope, that I shall be able to tell them that I had an old and learned friend, whom I would put above all the sweepings of their hall, who was of a different opinion; who had derived his ideas of civil liberty from the purest fountains of Athens and of Rome; who had fed the youthful vigour of his studious mind with the theoretick knowledge of their wisest philosophers and statesmen; and who had refined that theory into the quick and exquisite sensibility of moral instinct, by contemplating the practice of their most illustrious examples; by dwelling on the sweet souled piety of Cimon; on the anticipated christianity of Socrates; on the gallant and pathetick patriotism of Epaminondas; on that pure austerity of Fabricius, whom to move from his integrity would have been more difficult than to have pushed the sun from his course. I would add, that if he had seemed to hesitate, it was but for a moment; that his hesitation was like the passing cloud that floats across the morning sun, and hides it from the view, and does so for a moment hide it by involving the spectator without even approaching the face of the luminary. And this soothing hope I draw from the dearest and tenderest recollections of my life, from the remembrance of those attack nights and those refectations of the gods which we have spent with those admired and respected and beloved companions who have gone before us;—over whose ashes the most precious tears of Ireland have been shed: yes, my good lord, I see you do not forget them; I see their sacred forms passing in sad review before your memory; I see your pained and softened fancy recalling those happy meetings, when the innocent enjoyment of social mirth expanded into the nobler warmth of social virtue, and the horizon of the board became enlarged into the horizon of man;—when the swelling heart conceived and communicated the pure and

generous purpose—when my slenderer and younger taper imbibed its borrowed light from the more matured and redundant fountain of yours. Yes, my lord, we can remember those nights without any other regret than that they can never more return, for

“ We spent them not in toys, or lust, or wine :

“ But search of deep philosophy,

“ Wit, eloquence and poesy,

“ Arts which I lov'd, for they, my friend, were thine.”

But, my lords, to return to a subject from which to have thus far departed, I think, may not be wholly without excuse. The express object of the forty-fourth was to send persons *from* places where they were not triable by law, back to the places that had jurisdiction to try them. And in those very words does Mr. Justice Blackstone observe on the thirteenth of the king, that it was made to prevent impunity by escape, by giving a power of “ sending back ” such offenders as had so escaped.

This topick of argument would now naturally claim its place in the present discussion. I mention it now, that it might not be supposed that I meant to pre-empt so important a consideration. And I only mention it, because it will connect itself with a subsequent head of this inquiry in a manner more forcibly applicable to the object, when I think I may venture to say, it will appear to demonstration, that if the offence charged upon the defendant is triable at all, it is triable in Ireland and no where else; and of course that the prosecutors are acting in direct violation of the statute, when they seek to transport him from a place where he can be tried, into another country that can have no possible jurisdiction over him.

Let us now, my lords, examine the next position contended for by those learned prosecutors. Having laboured to prove that the act applies not merely to capital crimes, but to all offences whatsoever; having laboured to show that an act for preventing impunity by escape extends to cases not only where there was no escape, but where escape in fact was physically



impossible ; they proceed to put forward boldly a doctrine which no lawyer, I do not hesitate to say it, in Westminster-hall would have the folly or the temerity to advance ; that is, that the defendant may by construction of law be guilty of the offence in Westminster, though he should never have passed within its limits till he was sent thither to be tried ; with what a fatal and inexorable uniformity do the tempers and characters of men domineer over their actions and conduct ! How clearly must an Englishman, if by chance there be any now listening to us, discern the motives and principles that dictated the odious persecutions of 1794 re-assuming their operations ; forgetting that publick spirit by which they were frustrated ; unappalled by fear, undeterred by shame, and returning again to the charge ; the same wild and impious nonsense of constructive criminality, the same execrable application of the ill-understood rules of a vulgar, clerk-like, and illiterate equity, to the sound, plain, and guarded maxims of the criminal law of England ! the purest, the noblest, the chastest system of distributive justice that was ever venerated by the wise, or perverted by the foolish, or that the children of men in any age or climate of the world have ever yet beheld ; the same instruments, the same movements, the same artists, the same doctrines, the same doctors, the same servile and infuriated contempt of humanity, and persecution of freedom ! the same shadows of the varying hour that extend or contract their length, as the beam of a rising or a sinking sun plays upon the gnomon of self-interest ! how demonstratively does the same appetite for mice authenticate the identity of the transformed princess that had been once a cat !

But it seems as if the whole order and arrangement of the moral and the physical world had been contrived for the instruction of man, and to warn him that he is not immortal. In every age, in every country do we see the natural rise, advancement, and decline of virtue and of science, So it has been in Greece, in Rome, so it must must be, I fear, the

fate of England. In science, the point of its maturity and manhood is the commencement of its old age; the race of writers, and thinkers, and reasoners passes away, and gives place to a succession of men that can neither write, nor think, nor reason. The Hales, the Holts, and the Somers shed a transient light upon mankind, but are soon extinct and disappear, and give place to a superficial and overweening generation of laborious and strenuous idlers—of silly scholiasts, of wrangling mooters, of prosing garrulists who explore their darkling ascent upon the steps of science, by the balustrade of cases and manuscripts, who calculate their depth by their darkness, and fancy they are profound because they feel they are perplexed. When the race of the Palladios is extinct, you may expect to see a clumsy hodman collected beneath the shade of his shoulders, *απερ ηυριτε μεγαυτε εχοχος αυθραυπη κεφαλη, και ευρειας σμου,* affecting to fling a builder's glance upon the temple, on the proportion of its pillars; and to pass a critick's judgment on the doctrine that should be preached within them.

Let it not, my lords, be considered amiss, that I take this up rather as an English than an Irish question. It is not merely because we have no habeas corpus law in existence (the antiquarian may read of it, though we do not enjoy it;) it is not merely because my mind refuses itself to the delusion of imaginary freedom, and shrinks from the meanness of affecting an indignant haughtiness of spirit that belongs not to our condition, that I am disposed to argue it as an English question; but it is because I am aware, that we have now a community of interest and of destiny that we never had before—because I am aware, that, blended as we now are, the liberty of man must fall where it is highest, or rise where it is lowest, till it finds its common level in the common empire—and because, also, I wish that Englishmen may see, that we are conscious that nothing but mutual benevolence and sympathy can support the common interest that should bind us against the external

or the intestine foe ; and that we are willing, whenever that common interest is attacked, to make an honest and animated resistance, as in a common cause, and with as cordial and tender an anxiety for their safety as for our own.

Let me now briefly, because no subject can be shorter or plainer, consider the principle of local jurisdictions, and constructive crimes :

A man is bound to obedience, and punishable for disobedience, of laws :—first, because, by living within their jurisdiction, he avails himself of their protection ; and this is no more than the reciprocity, of protection and allegiance on a narrower scale—and secondly, because by so living within their jurisdiction he has the means of knowing them, and cannot be excused because of his ignorance of them. I should be glad to know, upon the authority of what manuscript, of what pocket case, the soundness of these principles can be disputed ? I should be glad to know upon what known principle of English law a Chinese, or a Laplander, can be kidnapped into England, and arraigned for a crime which he committed under the pole, to the injury of a country which he had never seen—in violation of a law which he had never known, and to which he could not owe obedience—and, perhaps, for an act, the nonperformance of which might have forfeited his liberty or his life to the laws of that country which he was bound to know, and was bound to obey ? Very differently did our ancestors think of this subject :—They thought it essential to justice, that the jurisdiction of criminal law should be local and defined—that no man should be triable but there where he was accused of having actually committed the offence ; where the character of the prosecutor, where his own character was known, as well as the characters of the witnesses produced against him ; and where he had the authority of legal process to enforce the attendance of witnesses for his defence. They were too simple to know any thing of the equity of criminal law. Poor Bracton, or Fleta would have stared if you had asked them, “ What, gentlemen, do you mean to

say, that such a crime as this shall escape from punishment?" Their answer would have been, no doubt, very simple and very foolish: they would have said, "We know there are many actions that we think bad actions, which yet are not punishable, because not triable by law; and that are not triable, because of the local limits of criminal jurisdictions." And, my lords, to show with what a religious scrupulosity the locality of jurisdictions was observed, you have an instance in the most odious of all offences, treason only excepted—I mean the crime of wilful murder. By the common law, if a man in one county procured a murder to be committed, which was afterwards actually committed in another, such procurer could not be tried in either jurisdiction, because the crime was not completed in either. This defect was remedied by the act of Edward VI. which made the author of the crime amenable to justice: but in what jurisdiction did it make him amenable? was it there where the murder was actually perpetrated?—by no means; but there only where he had been guilty of the procurement, and where alone his accessorial offence was completed. And here you have the authority of parliament for this abstract position, that where a man living in one jurisdiction does an act, in consequence of which a crime is committed within another jurisdiction, he is by law triable only where his own personal act of procurement was committed, and not there where the procured or projected crime actually took effect. In answer to these known authorities of common law, has any statute, has a single decision or even dictum of a court, been adduced? Or, in an age when the pastry cooks and snuff-shops have been defrauded of their natural right to these compositions that may be useful without being read, has even a single manuscript been offered to show the researches of these learned prosecutors, or to support their cause? No, my lords; there has not.

I said, my lords, that this was a fruit from the same tree that produced the stupid and wicked prosecutions of 1794: let me not be supposed to say it

is a mere repetition of that attempt, without any additional aggravation. In 1794, the design, and odious enough it was, was confined to the doctrine of constructive guilt; but it did not venture upon the atrocious outrage of a substituted jurisdiction. The Englishman was tried on English ground, where he was known, where he could procure his witnesses, where he had lived, and where he was accused of the crime, whether actual or constructive; but the locality of the trial defeated the infernal malice of those prosecutions. The speeches of half the natural day, where every juryman had his hour, were the knell of sleep, but they were not the knell of death. The project was exposed, and the destined victims were saved. A piece so damned could not safely be produced again on the same stage. It was thought wise, therefore, to let some little time pass, and then to let its author produce it on some distant provincial theatre for his own benefit, and at his own expense and hazard. To drag an English judge from his bench, or an English member of parliament from the senate, and in the open day, in the city of London, to strap him to the roof of a mail coach, or pack him up in a wagon, or hand him over to an Irish bailiff, with a rope tied about his leg, to be goaded forward like an ox, on his way to Ireland, to be there tried for a constructive misdemeanor, would be an experiment, perhaps, not very safe to be attempted. These merlins, therefore, thought it prudent to change the scene of their sorcery;

modo Romæ, modo ponit Athenis!

The people of England might, perhaps, enter into the feelings of such an exhibition with an officiousness of sympathy, not altogether for the benefit of the contrivers—

Nec natos coram populo Medea trucidet—

and it was thought wise to try the second production before spectators whose necks were pliant, and whose hearts were broken; where every man who dared to refuse his worship to the golden calf, would have the

furnace before his eyes, and think that it was at once useless and dangerous to speak, and discreet, at least, if it was not honest, to be silent.—I cannot deny that it was prudent to try an experiment, that, if successful, must reduce an Englishman to a state of slavery more abject and forlorn than that of the helots of Sparta, or the negroes of your plantations—for see, my lords, the extent of the construction now broadly and directly contended for at your bar.—The king's peace in Ireland, it seems, is distinct from his peace in England, and both are distinct from his peace in Scotland; and, of course, the same act may be a crime against each distinct peace, and severally and successively punishable in each country—so much more inveterate is the criminality of a constructive than of an actual offence. So that the same man for the same act against laws that he never heard of, may be punished in Ireland, be then sent to England by virtue of the warrant of Mr. Justice Bell, endorsed by my lord Ellenborough, and after having his health, his hopes, and his property destroyed for his constructive offences against his majesty's peace in Ireland, and his majesty's peace in England, he may find that his majesty's peace in the Orkneys has, after all a vested remainder in his carcass; and, if it be the case of a libel, for the full time and term of fourteen years from the day of his conviction before the Scottish jurisdiction, to be fully completed and determined. Is there, my lords, can there be a man who hears me, that does not feel that such a construction of such a law would put every individual in society under the despotical dominion, would reduce him to be the despicable chattel of those most likely to abuse their power, the profligate of the higher, and the abandoned of the lower orders; to the remorseless malice of a vindictive minister, to the servile instrumentality of a trading justice?—Can any man who hears me, conceive any possible cause of abduction of rape or of murder, that may not be perpetrated, under the construction now shamelessly put forward?—Let us suppose a case.—By this construction a

person in England, by procuring a misdemeanor to be committed in Ireland, is constructively guilty in Ireland, and, of course, triable in Ireland—let us suppose that Mr. Justice Bell receives, or says he receives information, that the lady of an English nobleman wrote a letter to an Irish chambermaid, counselling her to steal a row of pins from an Irish pedlar, and that the said row of pins was, in consequence of such advice and counsel, actually stolen, against the Irish peace of our lord the king; suppose my lord Ellenborough, knowing the signature, and reverencing the virtue of his tried and valued colleague, endorses this warrant; is it not clear as the sun that this English lady may, in the dead of night, be taken out of her bed, and surrendered to the mercy of two or three Irish bailiffs, if the captain that employed them should happen to be engaged in any coteremporary adventure nearer to his heart, without the possibility of any legal authority interposing to save her, to be matronized in a journey by land, and a voyage by sea, by such modest and respectable guardians, to be dealt with during the journey as her companions might think proper—and to be dealt with after by the worshipful correspondent of the noble and learned lord, Mr. Justice Bell, according to law?—I can, without much difficulty, my lords, imagine, that after a year or two had been spent in accounts current, in drawing and redrawing for human flesh between our worthy Bells and Medicotts on this side of the water, and their noble or their ignoble correspondents on the other, that they might meet to settle their accounts, and adjust their balances. I can conceive that the items might not be wholly destitute of curiosity.—Brother B. I take credit for the body of an English patriot.—Brother E. I set off against it that of an Irish judge.—Brother B. I charge you in account with three English bishops.—Brother E. I set off Mrs. M'Lean and two of her chickens; petticoat against petticoat.—Brother B. I have sent you the body of a most intractable disturber, a fellow that has had the impudence to give a threshing to Buona-

parte himself; I have sent you sir Sidney.—Dearest brother E.—But, I see my learned opponents smile—I see their meaning.—I may be told, that I am putting imaginary and ludicrous, but not probable, and, therefore, not supposable cases.—But I answer, that reasoning would be worthy only of a slave, and disgraceful to a freeman. I answer, that the condition and essence of rational freedom is, not that the subject probably will not be abused, but that no man in the state shall be clothed with any discretionary power, under the colour and pretext of which he can dare to abuse him. As to probability, I answer, that in the mind of man there is no more instigating temptation to the most remorseless oppression, than the rancour and malice of irritated pride and wounded vanity.—To the argument of improbability I answer, the very fact, the very question in debate, nor to such answer can I see the possibility of any reply, save that the prosecutors are so heartily sick of the point of view into which they have put themselves by their prosecution, that they are not likely again to make a similar experiment. But when I see any man fearless of power, because it possibly, or probably, may not be exercised upon him, I am astonished at his fortitude; I am astonished at the tranquil courage of any man who can quietly see that a loaded cannon is brought to bear upon him, and that a fool is sitting at its touch hole with a lighted match in his hand. And yet, my lords, upon a little reflection, what is it, after what we have seen, that should surprise us, however it may shock us?—What have the last ten years of the world been employed in, but in destroying the land marks of rights, and duties, and obligations; in substituting sounds in the place of sense; in substituting a vile and canting methodism in the place of social duty and practical honour; in suffering virtue to evaporate into phrase, and morality into hypocrisy and affectation?—We talk of the violations of Ham-burgh or of Baden; we talk of the despotic and remorseless barbarian who tramples on the common privileges of the human being; who in defiance of



the most known and sacred rights, issues the brutal mandate of usurped authority ; who brings his victim by force within the limits of a jurisdiction to which he never owed obedience, and there butchers him for a constructive offence. Does it not seem as if it was a contest whether we should be more scurrilous in invective, or more atrocious in imitation ? Into what a condition must we be sinking, when we have the front to select as the subjects of our obloquy, those very crimes which we have flung behind us in the race of profligate rivalry !

My lords, the learned counsel for the prosecutors have asserted, that this act of the forty-fourth of the king extends to all offences, no matter how long or previously to it they may have been committed.—The words are, “ That from and after the first of August 1804, if any person, &c. shall escape, &c.—Now, certainly nothing could be more convenient for the purpose of the prosecutors than to dismiss, as they have done, the words “ escape and go into,” altogether. If those words could have been saved from the ostracism of the prosecutors, they must have designated some act of the offenders, upon the happening or doing of which the operation of the statute might commence ; but the temporary bar of these words they wave by the equity of their own construction, and thereby make it a retrospective law ; and having so construed it a manifestly *ex post facto* law, they tell you it is no such thing, because it creates no new offence, and only makes the offender amenable who was not so before. That law professes to take effect only from and after the first of August 1804.—Now, for eighteen months before that day, it is clear that Mr. Johnson could not be removed by any power existing from his country and his dwelling ; but the moment the act took effect, it is made to operate upon an alleged offence, committed, if at all, confessedly eighteen months before. But another word as to the assertion, that it is not *ex post facto*, because it creates no new crime, but only makes the party amenable. The force of that argument is precisely

this:—If this act inflicted deportation on the defendant by way of punishment after his guilt had been established by conviction, that would, no doubt, be tyrannical, because *ex post facto*; but here he suffers the deportation, while the law is bound to suppose him perfectly innocent; and that only by way of process to make him amenable, not by way of punishment: and surely he cannot be so unreasonable as not to feel the force of the distinction. How naturally, too, we find, similar outrages resort to similar justifications! Such exactly was the defence of the forcible entry into Baden. Had that been a brutal violence committed in perpetration of the murder of the unfortunate victim, perhaps very scrupulous moralists might find something in it to disapprove; but his imperial majesty was too delicately tender of the rights of individuals and of nations, to do any act so flagrant as that would be, if done in that point of view; but his imperial majesty only introduced a clause of *ne omittas* into his warrant, whereby the worshipful Bells and Medicots that executed it were authorized to disregard any supposed fantastical privilege of nations that gave sanctuary to traitors; and he did that from the purest motives; from as disinterested a love of justice as that of the present prosecutors, and not at all in the way of an *ex post facto* law, but merely as process to bring him in, and make him amenable to the competent and unquestionable jurisdiction of the *bois de Boulogne*.—Such are the wretched sophistries to which men are obliged to have recourse, when their passions have led them to do what no thinking man can regard without horror, what they themselves cannot look at without shame; and for which no legitimate reasoning can suggest either justification or excuse. Such are the principles of criminal justice, on which the first experiment is made in Ireland, but I venture to pledge myself to my fellow subjects of Great Britain, that, if the experiment succeeds, they shall soon have the full benefit of that success. I venture to promise them, they shall soon have their full measure of this salutary

system for making men "amenable," heaped and running over into their bosoms.

There now remains, my lords, one, and only one topick of this odious subject, to call for observation. The offence here appears by the return and the affidavits to be a libel upon the Irish government, published by construction in Westminster. Of the constructive commission of a crime in one place by an agent, who, perhaps, at the moment of the act, is in another hemisphere, you have already heard enough:—Here, therefore, we will consider it simply as an alleged libel upon the Irish government; and whether as such, it is a charge coming within the meaning of the statute, and for which a common justice of peace in one kingdom is empowered to grant a warrant for conveying the person accused for trial into the other. Your lordships will observe, that in the whole catalogue of crimes for which a justice of peace may grant a warrant, there is not one that imposes upon him the necessity of deciding upon any matter of law, involving the smallest doubt or difficulty whatsoever. In treason, the overt act; in felony, whether capital or not, the act; in misdemeanors, the simple act. The dullest justice can understand what is a breach of the peace, and can describe it in his warrant. It is no more than the description of a fact which the informer has seen and sworn to. But no libel comes within such a class, for it is decided over and over, that a libel is no breach of the peace, and upon that ground it was that Mr. Wilkes, in 1763, was allowed the privilege of parliament, which privilege does not extend to any breach of the peace.

See then, my lords, what a task is imposed upon a justice of the peace, if he is to grant such a warrant upon such a charge; he no doubt may easily comprehend the allegation of the informer as to the fact of writing the supposed libel; in deciding whether the facts sworn amounted to a publication or not, I should have great apprehension of his fallibility; but if he got over those difficulties I should much fear for his competency to decide what given facts

would amount to a constructive publication.—But even if he did solve that question, a point on which, if I were a justice, I should acknowledge myself most profoundly ignorant, he would then have to proceed to a labour in which I believe no man could expect him to succeed: that is, how far the paper sworn to was, in point of legal construction, libellous or not. I trust, this court will never be prevailed upon to sanction, by its decision, a construction that would give to such a set of men a power so incompatible with every privilege of liberty, or of law. To say it would give an irresistible power of destroying the liberty of the press in Ireland would, I am aware, be but a silly argument where such a thing has long ceased to exist. But I have for that very reason a double interest now, as a subject of the empire, in that noble guardian of liberty in the sister nation. When my own lamp is broken, I have a double interest in the preservation of my neighbour's. But if every man in England who dares to observe, no matter how honestly and justly, upon the conduct of Irish ministers, is liable to be torn from his family, and dragged hither by an Irish bailiff, for a constructive libel against the Irish government and upon the authority of an Irish warrant, no man can be such a fool as not to see the consequence. The inevitable consequence is this: that at this awful crisis, when the weal, not of this empire only, but of the whole civilized world, depends on the steady faith and the consolidated efforts of these two countries—when Ireland is become the right arm of England—when every thing that draws the common interest and affection closer gives the hope of life—when every thing that has even a tendency to relax that sentiment is a symptom of death,—even at such a crisis may the rashness or folly of those entrusted with its management so act as to destroy its internal prosperity and repose, and lead it into the two-fold, fatal error, of mistaking its natural enemies for its friends, and its natural friends for its natural enemies, without any man being found

so romantically daring as to give notice of the approaching destruction.

My lords, I suppose the learned counsel will do here what they have done in the other court: they will assert, that this libel is not triable here; and they will argue, that so false and heinous a production surely ought to be triable somewhere. As to the first position, I say the law is directly against them. From a very early stage of the discussion, the gentlemen for the prosecution thought it well for their clients to take a range into the facts much more at large than they appeared on the return to the writ, or even were by the affidavits that have been made; and they have done this to take the opportunity of aggravating the guilt of the defendant, and at the same time of panegyricizing their clients; they have therefore not argued upon the libel generally as a libel, but they thought it prudent to appear perfectly acquainted with the charges which it contains;—they have therefore assumed, that it relates to the transactions of the twenty-third of July, 1808, and that the guilt of the defendant was, that he wrote that libel in Ireland, which was afterwards published in England; not by himself, but by some other persons. Now, on these facts, nothing can be clearer than that he is triable here. If it be a libel, and if he wrote it here, and it was published in England, most manifestly there must have been a precedent publication, not merely by construction of law in Ireland, but a publication by actual fact; and for this plain reason, if you for a moment suppose the libel in his possession (and if he did in fact write it, I can scarcely conceive that it was not, unless he wrote it perhaps by construction) there was no physical means of transmitting it to England that would not amount to a publication here; because, if he put it into the post office, or give it to a messenger to carry thither, that would be complete evidence of publication against him: so would the mere possession of the paper, in the hands of the witness who appeared and produced it, be perfect evidence, if not accounted for or

contradicted, to charge him with the publication; so that really I am surprised how gentlemen could be betrayed into positions so utterly without foundation. They would have done just as usefully for their clients, if they had admitted what every man knows to be the fact; that is, that they durst not bring the charge before an Irish jury. The facts of that period were too well understood. The Irish publick might have looked at such a prosecution with the most incredulous detestation; and if they had been so indiscreet as to run the risk of coming before an Irish jury, instead of refuting the charges against them as a calumny, they would have exposed themselves to the peril of establishing the accusation, and of raising the character of the man whom they had the heart to destroy, because he had dared to censure them. Let not the learned gentlemen, I pray, suppose me so ungracious as to say, that this publication, which has given so much pain to their clients, is actually true. I cannot personally know it to be so, nor do I say so, nor is this the place or the occasion to say that it is so. I mean only to speak positively to the question before you, which is matter of law. But as the gentlemen themselves thought it meet to pronounce a eulogy on their clients, I thought it rather unseemly not to show that I attended to them; I have most respectfully done so; I do not contradict any praise of their virtues or their wisdom, and I only wish to add my very humble commendation of their prudence and discretion, in not bringing the trial of the present libel before a jury of this country.

The learned counsel have not been contented with abusing this libel as a production perfectly known to them; but they have wandered into the regions of fancy. No doubt the other judges, to whom those pathetick flights of forensick sensibility were addressed, must have been strongly affected by them. The learned gentlemen have supposed a variety of possible cases. They have supposed cases of the foulest calumniators aspersing the most virtuous ministers.

Whether such supposed cases have been suggested by fancy, or by fact, it is not for me to decide; but I beg leave to say, that it is as allowable to us as to them to put cases of supposition—

—Cur ego si fingere pauca  
Possum, invidear?

Let me then, my lords, put an imaginary case of a different kind.—Let me suppose, that a great personage, intrusted with the safety of the citadel (meaning and wishing perhaps well, but misled by those lacquered vermin that swarm in every great hall) leaves it so loosely guarded, that nothing but the gracious interposition of Providence has saved it from the enemy. Let me suppose another great personage going out of his natural department, and, under the supposed authority of high station, disseminating such doctrines as tend to root up the foundation of society—to destroy all confidence between man and man—and to impress the great body of the people with a delusive and desperate opinion, that their religion could dissolve or condemn the sacred obligations that bind them to their country—that their rulers have no reliance upon their faith, and are resolved to shut the gates of mercy against them.

Suppose a good and virtuous man saw that such doctrines must necessarily torture the nation into such madness and despair, as to render them unfit for any system of mild or moderate government; that, if on one side, bigotry or folly shall inject their veins with fire, such a fever must be kindled as can be allayed only by keeping a stream of blood perpetually running from the other, and that the horrors of martial law must become the direful but inevitable consequence. In such a case, let me ask what would be his indispensable duty?—it would be, to avert such dreadful dangers, by exposing the conduct of such persons; by holding up the folly of such bigoted and blind enthusiasm to condign derision and contempt; and painfully would he feel that on such an occasion he must dismiss all forms and ceremonies; and that to do his duty with effect, he must do it without

mercy. He should also foresee, that a person so acting, when he returned to those to whom he was responsible, would endeavour to justify himself by defaming the country which he had abused—for calumny is the natural defence of the oppressor: he should, therefore, so reduce his personal credit to its just standard, that his assertions might find no more belief than they deserved. Were such a person to be looked on as a mere private individual, charity and good nature might suggest not a little in his excuse. An inexperienced man, new to the world, and in the honey moon of preferment, would run no small risk of having his head turned in Ireland. The people of our island are by nature penetrating, sagacious, artful, and comick—"natio comæda est." In no country under heaven would an ass be more likely to be hoodwinked, by having his ears drawn over his eyes, and to acquire that phantastical alacrity that makes dullness disposable to the purposes of humorous malice, or interested imposture. In Ireland, a new great man could get the freedom of a science as easily as of a corporation, and become a doctor, by construction, of the whole Encyclopædia; and great allowance might be made under such circumstances for indiscretions and mistakes, as long as they related only to himself; but the moment they become publick mischiefs, they lose all pretensions to excuse—the very ambition of incapacity is a crime not to be forgiven; and however painful it may be to inflict, it must be remembered, that mercy to the delinquent would be treason to the publick.

I can the more easily understand the painfulness of the conflict between charity and duty, because at this moment I am labouring under it myself; and I feel it the more acutely, because I am confident that the paroxysms of passion that have produced these publick discussions have been bitterly repented of. I think, also, that I should not act fairly if I did not acquit my learned opponents of all share whatsoever in this prosecution. They have too much good sense to have advised it; on the contrary, I can easily sup-



pose, Mr. Attorney General bent for to give counsel and comfort to his patient; and after hearing no very concise detail of his griefs, his resentments and his misgivings, methinks I hear the answer that he gives, after a pause of sympathy and reflection.—“No, sir, don’t proceed in such a business; you’ll only expose yourself to scorn in one country, and to detestation in the other. You know you durst not try him here, where the whole kingdom would be his witness. ~~And~~ If you should attempt to try him there, where he ~~can~~ have no witnesses, you will have both countries upon your back. An English jury would never find him guilty. You will only confirm the charge against yourself; and be the victim of an impotent, abortive malice. If you should have any ulterior project against him, you will defeat that also; for those that might otherwise concur in the design, will be shocked and ashamed of the violence and folly of such a tyrannical proceeding, and will make a merit of protecting him, and of leaving you in the lurch.—What you say of your own feelings, I can easily conceive.—You think you have been much exposed by those letters: but then remember, my dear sir, that a man can claim the privilege of being made ridiculous or hateful by no publications but his own. Vindictive critics have their rights, as well as bad authors. The thing is bad enough at best; but if you go on, you will make it worse—it will be considered an attempt to degrade the Irish bench and the Irish bar,—you are not aware what a nest of hornets you are disturbing.—One inevitable consequence you don’t foresee—you will certainly create the very thing in Ireland, that you are so afraid of: a newspaper. Think of that, and keep yourself quiet.—And, in the mean time, console yourself with reflecting, that no man is laughed at for a long time;—every day will produce some new ridicule that must supersede him.”—Such, I am satisfied, was the counsel given; but I have no apprehension for my client, because it was not taken. Even if it should be his fate to be surrendered to his keepers—to be torn from

his family—to have his obsequies performed by torch light—to be carried to a foreign land, and to a strange tribunal where no witness can attest his innocence, where no voice that he ever heard can be raised in his defence, where he must stand mute, not of his own malice, but the malice of his enemies—yes, even so, I see nothing for him to fear.—That all-gracious Being that shields the feeble from the oppressor, will fill his heart with hope, and confidence, and courage; his sufferings will be his armour, and his weakness will be his strength; he will find himself in the hands of a brave, a just, and a generous nation—he will find that the bright examples of her Russels and her Sidneys have not been lost to her children; they will behold him with sympathy and respect, and his persecutors with shame and abhorrence; they will feel, too, that what is then his situation, may to morrow be their own—but their first tear will be shed for him, and the second only for themselves—their hearts will melt in his acquittal; they will convey him kindly and fondly to their shore; and he will return in triumph to his country; to the threshold of his sacred home, and to the weeping welcome of his delighted family; he will find that the darkness of a dreary and a lingering night hath at length passed away, and that joy cometh in the morning.—No, my lords, I have no fear for the ultimate safety of my client. Even in these very acts of brutal violence that have been committed against him, do I hail the flattering hope of final advantage to him—and not only of final advantage to him, but of better days and more prosperous fortune for this afflicted country—that country of which I have so often abandoned all hope, and which I have been so often determined to quit forever.

Sæpe vale dicto multa sum deinde locutus,  
Et quasi discedens oscula summa dabam,  
Indulgens animo, pes tardus erat.

But I am reclaimed from that infidel despair—I am satisfied that while a man is suffered to live, it is an

intimation from Providence that he has some duty to discharge, which it is mean and criminal to decline; had I been guilty of that ignominious flight, and gone to pine in the obscurity of some distant retreat, even in that grave I should have been haunted by those passions by which my life had been agitated—

*Quæ cura vivos eadem sequitur tellure repostos.*

And, if the transactions of this day had reached me, I feel, how my heart would have been agonized by the shame of the desertion; nor would my sufferings have been mitigated by a sense of the feebleness of that aid, or the smallness of that service, which I could render or withdraw. They would have been aggravated by the consciousness that, however feeble or worthless they were, I should not have dared to thief them from my country.—I have repented—I have staid—and I am at once rebuked and rewarded by the happier hopes that I now entertain.—In the anxious sympathy of the publick—in the anxious sympathy of my learned brethren, do I catch the happy presage of a brighter fate for Ireland. They see that, within these sacred walls, the cause of liberty and of man may be pleaded with boldness, and heard with favour. I am satisfied they will never forget the great trust, of which they alone are now the remaining depositaries. While they continue to cultivate a sound and literate philosophy—a mild and tolerating christianity—and to make both the sources of a just and liberal, and constitutional jurisprudence, I see every thing for us to hope; into their hands, therefore, with the most affectionate confidence in their virtue, do I commit these precious hopes. Even I may live long enough yet to see the approaching completion, if not the perfect accomplishment of them. Pleased shall I then resign the scene to fitter actors—pleased shall I lay down my wearied head to rest, and say, “Lord, now lettest thou thy servant depart in peace, according to thy word, for mine eyes have seen thy salvation.”

## MR. BURKE'S SPEECH

ON THE 1ST OF DECEMBER, 1783, UPON THE QUESTION FOR  
THE SPEAKER'S LEAVING THE CHAIR, IN ORDER FOR THE  
HOUSE TO RESOLVE ITSELF INTO A COMMITTEE, ON MR.  
FOX'S EAST-INDIA BILL.

**EVEN** more than any of his predecessors, Mr. Hastings' administration was distinguished by a spirit of daring enterprise, and intrepid adventure.

By wars sometimes rashly undertaken, but always wisely conducted, he increased, to an incredible extent, the limits of the British India possessions. But these conquests, important as they were to his country, were highly injurious to the separate and distinct interests of the company. They consumed its wealth, and incumbered it with a load of debt without any adequate compensation.

Though Mr. Hastings confessedly created a magnificent empire, it was too unwieldy and complicated to be preserved or regulated by any scheme of *commercial policy*, or *corporate authority*. The government of India, therefore, loudly called for amendment. The subject at length attracted the attention of *statesmen*, and became one of parliamentary inquiry. England had just come out of a disastrous war, decrepit in strength, and shorn of half her glory. The American colonies she had lost for ever. The culture and improvement of her India territories now held forth the surest indemnity for the loss she had sustained. At the commencement of the session of parliament, 1783, Mr. Fox, then secretary of state, introduced a bill for "*investing the affairs of the East India com-*

*pany in the hands of certain commissioners, for the benefit of the proprietors and of the publick."* This memorable bill was framed on the supposition of the insolvency of the company by their mismanagement, and their total incompetency to govern the vast territories which they had acquired. The remedial plan, which it proposed, was bold and decisive. It took from the company the entire administration, not of their territorial merely, but of their commercial affairs, and vested the direction of them in seven commissioners *named in the bill*, and who were irremovable by the crown, except in consequence of an address from either house of parliament. The commissioners thus appointed, were all the particular friends of Mr. Fox. The bill, moreover, empowered these commissioners to enter into possession of all lands, tenements, books, records, vessels, goods, merchandise, and securities, in trust for the company.

The bill, in its progress through the house, was opposed, with great vigour and ability, by Mr. Pitt. He argued, that by the destruction of the company's charter, which was as strong and clear, and the right founded upon it as well ascertained as that of any charter could be, that not only a flagrant injustice was done, but that all *chartered rights were endangered by the precedent.*

"The principle of the bill once established, what security had the other publick companies of the kingdom? What security had the bank of England? What security had the national creditors, or the publick corporations? What assurance, indeed, could there be for the *great charter* itself, the foundation of all our *liberties*?"

He contended, besides, that the bill would be dangerous to the constitution, by establishing an influence independent of the legislature, which must be under the control of its creator, Mr. Fox. It gave to the minister all the authority, patronage, and treasure of India. With such advantages, he could not fail of commanding a majority of both houses of parliament.

Mr. Pitt did not hesitate, therefore, to impute to the mover of the bill the desire of making his power permanent, and of an intention to sacrifice, at the shrine of his criminal ambition, the king, the parliament, and the people. The author of this most unjust, unconstitutional, and flagitious plan, hopes, said he, to elevate, by it, his present connexions to a situation in which no political convulsions, and no variations of power, can destroy their importance, and put an end to their ascendancy.

He further insisted, that the affairs of the company were, by no means, in the desperate state in which they had been represented, or, that they required the harsh remedy proposed by the bill.

"India, it was true, wants reform, but not such a reform as this. It wants a *constitutional* alteration, and not a *tyrannical* one, that breaks through every principle of equity and justice."

But neither the author of the bill, nor his coadjutors were dismayed by the violence with which it was assailed. Burke, among others, came forward and delivered the annexed masterly speech, in defence of his friend and the measure. Fox also replied with great success. His speech on the occasion, will be found here, following that of Mr. Burke. The speech of Mr. Pitt is not reported at sufficient length to deserve insertion. But even in its present mutilated shape, it has many proofs of surprising strength, and uncommon ingenuity.

The bill, however, was carried in the lower house by a considerable majority, and immediately afterwards Mr. Fox in triumph presented it at the bar of the lords. But there it encountered a still more formidable opposition. At the very threshold of its introduction, lord Temple arose, and said "that he was happy to embrace the first opportunity of entering his protest against so *infamous a bill*; against a stretch of power so truly alarming; and that went near to seize upon the most inestimable part of our constitution—OUR CHARTERED RIGHTS." He was

followed in the same course by several speakers. Lord Thurlow declared the bill to be "the most atrocious violation of private property, in justification of which, if the plea of political necessity were urged, that necessity must be proved by evidence at the bar of the house, and not by reports of a committee; to which he should pay as much attention as to the romance of Robinson Crusoe." "To divest the company," said earl Camden, "of the management of their own property, and commercial concerns was to treat them as idiots; and I regard the bill not so much in the light of a commission of bankruptcy, as of lunacy." He concluded by forcibly asserting "that from the immense influence which the bill gave to the minister, if it were adopted, the king of England and the king of Bengal would be seen contending for superiority in the British parliament."

The house of lords rejected the bill.

The royal indignation being excited by the supposed tendency of this measure, Mr. Fox and his friends were dismissed, who were succeeded by an administration, at the head of which was placed Mr. Pitt. The world now beheld the astonishing phenomenon of a stripling of twenty-five years, presiding over the destinies of a great empire, and directing its complex machinery with a skill, judgment, and success, perhaps, never before attained by the wisest and most experienced of her statesmen.

#### SPEECH, &c.

MR. SPEAKER,

I THANK you for pointing to me. I really wished much to engage your attention in an early stage of the debate. I have been long very deeply, though perhaps ineffectually, engaged in the preliminary inquiries, which have continued without intermission for some years. Though I have felt, with some degree of sensibility, the natural and inevitable impressions of the several matters of fact, as they have been successively disclosed, I have not at any time attempted to trouble you on the merits of the subject,

and very little on any of the points which incidentally arose in the course of our proceedings. But I should be sorry to be found totally silent upon this day. Our inquiries are now come to their final issue. It is now to be determined whether the three years of laborious parliamentary research, whether the twenty years of patient Indian suffering, are to produce a substantial reform in our eastern administration; or whether our knowledge of the grievances has abated our zeal for the correction of them, and our very inquiry into the evil was only a pretext to elude the remedy which is demanded from us by humanity, by justice, and by every principle of true policy. Depend upon it, this business cannot be indifferent to our fame. It will turn out a matter of great disgrace or great glory to the whole British nation. We are on a conspicuous stage, and the world marks our demeanour.

I am therefore a little concerned to perceive the spirit and temper in which the debate has been all along pursued upon one side of the house. The declamation of the gentlemen who oppose the bill has been abundant and vehement; but they have been reserved and even silent about the fitness or unfitness of the plan to attain the direct object it has in view. By some gentlemen it is taken up (by way of exercise I presume) as a point of law on a question of private property, and corporate franchise; by others it is regarded as the petty intrigue of a faction at court, and argued merely as it tends to set this man a little higher, or that a little lower in situation and power. All the void has been filled up with invectives against coalition; with allusions to the loss of America; with the activity and inactivity of ministers. The total silence of these gentlemen concerning the interest and well being of the people of India, and concerning the interest which this nation has in the commerce and revenues of that country, is a strong indication of the value which they set upon these objects.

It has been a little painful to me to observe the intrusion into this important debate of such company as



*quo warranto*, and *mandamus*, and *certiorari*; as if we were on a trial about mayors and aldermen, and capital burgesses; or engaged in a suit concerning the borough of Penryn, or Saltash, or St. Ives, or St. Mawes. Gentlemen have argued with as much heat and passion, as if the first things in the world were at stake; and their topics are such, as belong only to matter of the lowest and meanest litigation. It is not right, it is not worthy of us, in this manner to depreciate the value, to degrade the majesty of this grave deliberation of policy and empire.

For my part, I have thought myself bound, when a matter of this extraordinary weight came before me, not to consider (as some gentlemen are so fond of doing) whether the bill originated from a secretary of state for the home department, or from a secretary for the foreign; from a minister of influence or a minister of the people; from Jacob or from Esau.\* I asked myself, and I asked myself nothing else, what part it was fit for a member of parliament, who has supplied a mediocrity of talents by the extreme of diligence, and who has thought himself obliged, by the research of years, to wind himself into the inmost recesses and labyrinths of the Indian detail, what part, I say, it became such a member of parliament to take, when a minister of state, in conformity to a recommendation from the throne, has brought before us a system for the better government of the territory and commerce of the East. In this light, and in this only, I will trouble you with my sentiments.

It is not only agreed but demanded, by the right honourable gentleman,† and by those who act with him, that a *whole* system ought to be produced; that it ought not to be a *half measure*; that it ought to be no *palliative*; but a legislative provision, vigorous, substantial, and effective.—I believe that no man who understands the subject can doubt for a moment, that those must be the conditions of any thing deserving

\* An allusion made by Mr. Powis.

† Mr. Pitt.

the name of a reform in the Indian government; that any thing short of them would not only be delusive, but, in this matter, which admits no medium, noxious in the extreme.

To all the conditions proposed by his adversaries the mover of the bill perfectly agrees; and on his performance of them he rests his cause. On the other hand, not the least objection has been taken, with regard to the efficiency, the vigour, or the completeness of the scheme. I am therefore warranted to assume, as a thing admitted, that the bills accomplish what both sides of the house demand as essential. The end is completely answered, so far as the direct and immediate object is concerned.

But though there are no direct, yet there are various collateral objections made; objections from the effects which this plan of reform for Indian administration may have on the privileges of great publick bodies in England; from its probable influence on the constitutional rights, or on the freedom and integrity of the several branches of the legislature.

Before I answer these objections, I must beg leave to observe, that if we are not able to contrive some method of governing India *well*, which will not of necessity become the means of governing Great Britain *ill*, a ground is laid for their eternal separation; but none for sacrificing the people of that country to our constitution. I am, however, far from being persuaded that any such incompatibility of interest does at all exist. On the contrary I am certain that every means, effectual to preserve India from oppression, is a guard to preserve the British constitution from its worst corruption. To show this, I will consider the objections, which I think are four.

1st. That the bill is an attack on the chartered rights of men.

2dly. That it increases the influence of the crown.

3dly. That it does *not* increase, but diminishes, the influence of the crown, in order to promote the interests of certain ministers and their party.

4thly. That it deeply affects the national credit.

As to the first of these objections, I must observe that the phrase of "the chartered rights of *men*," is full of affectation; and very unusual in the discussion of privileges conferred by charters of the present description. But it is not difficult to discover what end that ambiguous mode of expression, so often reiterated, is meant to answer.

The rights of *men*, that is to say, the natural rights of mankind, are indeed sacred things; and if any publick measure is proved mischievously to affect them, the objection ought to be fatal to that measure, even if no charter at all could be set up against it. If these natural rights are further affirmed and declared by express covenants, if they are clearly defined and secured against chicane, against power, and authority, by written instruments and positive engagements, they are in a still better condition; they partake not only of the sanctity of the object so secured, but of that solemn publick faith itself, which secures an object of such importance. Indeed this formal recognition, by the sovereign power, of an original right in the subject, can never be subverted, but by rooting up the holding radical principles of government, and even of society itself. The charters, which we call by distinction *great*, are publick instruments of this nature; I mean the charters of king John and king Henry the third. The things secured by these instruments may, without any deceitful ambiguity, be very fitly called the *chartered rights of men*.

These charters have made the very name of a charter dear to the heart of every Englishman.—But, sir, there may be, and there are charters, not only different in nature, but formed on principles the *very reverse* of those of the great charter. Of this kind is the charter of the East India company. *Magna Charta* is a charter to restrain power, and to destroy monopoly. The East India charter is a charter to establish monopoly, and to create power. Political power and commercial monopoly are *not* the rights of men; and the rights to them derived from charters, it is fallacious and sophistical to call

"the chartered rights of men." These chartered rights (to speak of such charters and of their effects in terms of the greatest possible moderation) do at least suspend the natural rights of mankind at large; and in their very frame and constitution are liable to fall into a direct violation of them.

It is a charter of this latter description (that is to say a charter of power and monopoly) which is affected by the bill before you. The bill, sir, does, without question, affect it; it does affect it essentially and substantially. But having stated to you of what description the chartered rights are which this bill touches, I feel no difficulty at all in acknowledging the existence of those chartered rights, in their fullest extent. They belong to the company in the surest manner; and they are secured to that body by every sort of publick sanction. They are stamped by the faith of the king; they are stamped by the faith of parliament; they have been bought for money, for money honestly and fairly paid; they have been bought for valuable consideration, over and over again.

I therefore freely admit to the East India company their claim to exclude their fellow subjects from the commerce of half the globe. I admit their claim to administer an annual territorial revenue of seven millions sterling; to command an army of sixty thousand men; and to dispose (under the control of a sovereign imperial discretion, and with the due observance of the natural and local law) of the lives and fortunes of thirty millions of their fellow creatures. All this they possess by charter and by acts of parliament (in my opinion) without a shadow of controversy.

Those who carry the rights and claims of the company the furthest do not contend for more than this; and all this I freely grant. But granting all this, they must grant to me in my turn, that all political power which is set over men, and that all privilege claimed or exercised in exclusion of them, being wholly artificial, and for so much, a derogation

tion from the natural equality of mankind at large, ought to be some way or other exercised ultimately for their benefit.

If this is true with regard to every species of political dominion, and every description of commercial privilege, none of which can be original self derived rights, or grants for the mere private benefit of the holders, then such rights, or privileges, or whatever else you choose to call them, are all in the strictest sense a *trust*; and it is of the very essence of every trust to be rendered *accountable*; and even totally to *cease*, when it substantially varies from the purposes for which alone it could have a lawful existence.

This I conceive, sir, to be true of trusts of power vested in the highest hands, and of such as seem to hold of no human creature, But about the application of this principle to subordinate *derivative* trusts, I do not see how a controversy can be maintained. To whom then would I make the East India company accountable? Why, to parliament to be sure; to parliament, from whom their trust was derived; to parliament, which alone is capable of comprehending the magnitude of its object, and its abuse; and alone capable of an effectual legislative remedy. The very charter, which is held out to exclude parliament from correcting malversation with regard to the high trust vested in the company, is the very thing which at once gives a title and imposes a duty on us to interfere with effect, wherever power and authority originating from ourselves are perverted from their purposes, and become instruments of wrong and violence.

If parliament, sir, had nothing to do with this charter, we might have some sort of Epicurean excuse to stand aloof, indifferent spectators of what passes in the company's name in India and in London. But if we are the very cause of the evil, we are in a special manner engaged to the redress; and for us passively to bear with oppressions committed under the sanction of our own authority, is

in truth and reason for this house to be an active accomplice in the abuse.

That the power notoriously, grossly, abused has been bought from us is very certain. But this circumstance, which is urged against the bill, becomes an additional motive for our interference; lest we should be thought to have sold the blood of millions of men, for the base consideration of money. We sold, I admit, all that we had to sell; that is, our authority, not our control. We had not a right to make a market of our duties.

I ground myself, therefore, on this principle—that if the abuse is proved, the contract is broken; and we re-enter into all our rights; that is, into the exercise of all our duties. Our own authority is indeed as much a trust originally, as the company's authority is a trust derivatively; and it is the use we make of the resumed power that must justify or condemn us in the resumption of it. When we have perfected the plan laid before us by the right honourable mover, the world will then see what it is we destroy, and what it is we create. By that test we stand or fall, and by that test I trust that it will be found in the issue, that we are going to supersede a charter abused to the full extent of all the powers which it could abuse, and exercised in the plenitude of despotism, tyranny, and corruption; and that, in one and the same plan, we provide a real chartered security for the *rights of men* cruelly violated under that charter.

This bill, and those connected with it, are intended to form the *magna charta* of Hindostan. Whatever the treaty of Westphalia is to the liberty of the princes and free cities of the empire, and to the three religions there professed—Whatever the great charter, the statute of tallage, the petition of right, and the declaration of right, are to Great Britain, these bills are to the people of India. Of this benefit, I am certain, their condition is capable; and when I know that they are capable of more, my vote shall most assuredly be for our giving to

the full extent of their capacity of receiving; and no charter of dominion shall stand as a bar in my way to their charter of safety and protection.

The strong admission I have made of the company's rights (I am conscious of it) binds me to do a great deal. I do not presume to condemn those who argue *a priori*, against the propriety of leaving such extensive political powers in the hands of a company of merchants. I know much is, and much more may be said against such a system. But with my particular ideas and sentiments, I cannot go that way to work. I feel an insuperable reluctance in giving my hand to destroy any established institution of government, upon a theory, however plausible it may be. My experience in life teaches me nothing clear upon the subject. I have known merchants with the sentiments and the abilities of great statesmen; and I have seen persons in the rank of statesmen, with the conceptions and character of pedlars. Indeed, my observation has furnished me with nothing that is to be found in any habits of life or education, which tends wholly to disqualify men for the functions of government; but that, by which the power of exercising those functions is very frequently obtained, I mean a spirit and habits of low cabal and intrigue; which I have never, in one instance, seen united with a capacity for sound and manly policy.

To justify us in taking the administration of their affairs out of the hands of the East India company, on my principles, I must see several conditions. 1st. The object affected by the abuse should be great and important. 2d. The abuse affecting this great object ought to be a great abuse. 3d. It ought to be habitual, and not accidental. 4th. It ought to be utterly incurable in the body as it now stands constituted. All this ought to be made as visible to me as the light of the sun, before I should strike off an atom of their charter. A right honourable gentleman\*

\* Mr. Pitt.

has said, and said I think but once, and that very slightly (whatever his original demand for a plan might seem to require) that "there are abuses in the company's government." If that were all, the scheme of the mover of this bill, the scheme of his learned friend, and his own scheme of reformation (if he has any) are all equally needless. There are, and must be, abuses in all governments. It amounts to no more than a nugatory proposition. But before I consider of what nature these abuses are, of which the gentleman speaks so very lightly, permit me to recal to your recollection the map of the country which this abused chartered right affects. This I shall do, that you may judge whether in that map I can discover any thing like the first of my conditions; that is, whether the object affected by the abuse of the East India company's power be of importance sufficiently to justify the measure and means of reform applied to it in this bill.

With very few, and those inconsiderable intervals, the British dominion, either in the company's name, or in the names of princes absolutely dependent upon the company, extends from the mountains that separate India from Tartary, to cape Comorin, that is, one-and-twenty degrees of latitude!

In the northern parts it is a solid mass of land; about eight hundred miles in length, and four or five hundred broad. As you go southward, it becomes narrower for a space. It afterwards dilates; but narrower or broader, you possess the whole eastern and north-eastern coast of that vast country, quite from the borders of Pegu.—Bengal, Bahar, and Orissa, with Benares (now unfortunately in our immediate possession) measure 161,978 square English miles; a territory considerably larger than the whole kingdom of France. Oude, with its dependent provinces, is 53,286 square miles, not a great deal less than England. The Carnatick, with Tanjour and the Circars, is 65,948 square miles, very considerably larger than England; and the whole of the company's dominions, comprehending Bombay



and Salsette, amounts to 281,412 square miles; which forms a territory larger than any European dominion, Russia and Turkey excepted. Through all that vast extent of country there is not a man who eats a mouthful of rice but by permission of the East India company.

So far with regard to the extent. The population of this great empire is not easy to be calculated. When the countries, of which it is composed, came into our possession, they were all eminently peopled, and eminently productive; though at that time considerably declined from their ancient prosperity. But since they are come into our hands!——! However if we take the period of our estimate immediately before the utter desolation of the Carnatick, and if we allow for the havock which our government had even then made in these regions, we cannot, in my opinion, rate the population at much less than thirty millions of souls; more than four times the number of persons in the island of Great Britain.

My next inquiry to that of the number, is the quality and description of the inhabitants. This multitude of men does not consist of an abject and barbarous populace; much less of gangs of savages, like the Guaranies and Chiquitos, who wander on the waste borders of the river of Amazons, or the Plate; but a people for ages civilized and cultivated; cultivated by all the arts of polished life, whilst we were yet in the woods. There have been (and still the skeletons remain) princes once of great dignity, authority, and opulence. There are to be found the chiefs of tribes and nations. There is to be found an ancient and venerable priesthood, the depository of their laws, learning, and history, the guides of the people, whilst living, and their consolation in death; a nobility of great antiquity and renown; a multitude of cities, not exceeded in population and trade by those of the first class in Europe; merchants and bankers, individual houses of whom have once vied in capital with the bank of England; whose credit had often supported a tottering state, and preserved

their governments in the midst of war and deolation; millions of ingenious manufacturers and mechanicks; millions of the most diligent, and not the least intelligent, tillers of the earth. Here are to be found almost all the religions professed by men, the Braminical, the Mussulmen, the Eastern and the Western Christians.

If I were to take the whole aggregate of our possessions there, I should compare it, as the nearest parallel I can find, with the empire of Germany. Our immediate possessions I should compare with the Austrian dominions, and they would not suffer in the comparison. The nabob of Oude might stand for the king of Prussia; the nabob of Arcot I would compare, as superiour in territory, and equal in revenue, to the elector of Saxony. Cheyt Sing, the rajah of Benares, might well rank with the prince of Hesse, at least; and the rajah of Tanjore (though hardly equal in extent of dominion, superiour in revenue) to the elector of Bavaria. The Polygars and the northern Zemindars, and other great chiefs, might well class with the rest of the princes, dukes, counts, marquisses, and bishops in the empire; all of whom I mention to honour, and surely without disparagement to any or all of those most respectable princes and grandees.

All this vast mass, composed of so many orders and classes of men, is again infinitely diversified by manners, by religion, by hereditary employment, through all their possible combinations. This renders the handling of India a matter in a high degree critical and delicate. But oh! it has been handled rudely indeed. Even some of the reformers seem to have forgot that they had any thing to do but to regulate the tenants of a manor, or the shopkeepers of the next county town.

It is an empire of this extent, of this complicated nature, of this dignity and importance, that I have compared to Germany, and the German government; not for an exact resemblance, but as a sort of a middle term, by which India might be approximated to

our understandings, and, if possible, to our feelings; in order to awaken something of sympathy for the unfortunate natives, of which I am afraid we are not perfectly susceptible, whilst we look at this very remote object through a false and cloudy medium.

My second condition, necessary to justify me in touching the charter, is, whether the company's abuse of their trust, with regard to this great object, be an abuse of great atrocity. I shall beg your permission to consider their conduct in two lights; first the political, and then the commercial. Their political conduct (for distinctness) I divide again into two heads; the external, in which I mean to comprehend their conduct in their federal capacity, as it relates to powers and states independent, or that not long since were such; the other internal, namely their conduct to the countries either immediately subject to the company, or to those who, under the apparent government of native sovereigns, are in a state much lower, and much more miserable, than common subjection.

The attention, sir, which I wish to preserve to method will not be considered as unnecessary or affected. Nothing else can help me to selection, out of the infinite mass of materials which have passed under my eye; or can keep my mind steady to the great leading points I have in view.

With regard, therefore, to the abuse of the external federal trust, I engage myself to you to make good these three positions. First, I say, that from mount Imaus (or whatever else you call that large range of mountains that walls the northern frontier of India) where it touches us in the latitude of twenty-nine, to cape Comorin, in the latitude of eight, that there is not a *single* prince, state, or potentate, great or small, in India, with whom they have come into contact, whom they have not sold. I say *sold*, though sometimes they have not been able to deliver according to their bargain.—Secondly, I say, that there is not a *single treaty* they have ever made, which they have not broken.—Thirdly, I say, that there is not a single

prince or state, who ever put any trust in the company who is not utterly ruined ; and that none are in any degree secure or flourishing, but in the exact proportion to their settled distrust and irreconcilable enmity to this nation.

These assertions are universal. I say in the full sense *universal*. They regard the external and political trust only ; but I shall produce others fully equivalent, in the internal. For the present, I shall content myself with explaining my meaning : and if I am called on for proof whilst these bills are depending (which I believe I shall not) I will put my finger on the appendixes to the reports, or on papers of record in the house, or the committees, which I have distinctly present to my memory, and which I think I can lay before you at half an hour's warning.

The first potentate sold by the company for money, was the Great Mogul—the descendant of Tamerlane. This high personage, as high as human veneration can look at, is, by every account, amiable in his manners, respectable for his piety according to his mode, and accomplished in all the Oriental literature.

All this, and the title derived under his *charter*, to all that we hold in India, could not save him from the general *sale*. Money is coined in his name ; in his name justice is administered ; he is prayed for in every temple through the countries we possess.—But he was sold.

It is impossible, Mr. Speaker, not to pause here for a moment, to reflect on the inconstancy of human greatness, and the stupendous revolutions that have happened in our age of wonders. Could it be believed, when I entered into existence, or when you, a younger man, were born, that on this day, in this house, we should be employed in discussing the conduct of those British subjects who had disposed of the power and person of the Grand Mogul ? This is no idle speculation. Awful lessons are taught by it, and by other events, of which it is not yet too late to profit.

This is hardly a digression; but I return to the sale of the Mogul. Two districts, Corah and Allahabad, out of his immense grants, were reserved as a royal demense to the donor of a kingdom, and the rightful sovereign of so many nations.—After withholding the tribute of 260,000*l.* a year, which the company was, by the *charter* they had received from this prince, under the most solemn obligation to pay, these districts were sold to his chief minister Sujah ul Dowlah; and, what may appear to some the worst part of the transaction, these two districts were sold for scarcely two years purchase. The descendant of Tamerlané now stands in need almost of the common necessaries of life; and in this situation, we do not even allow him, as bounty, the smallest portion of what we owe him in justice.

The next sale was that of the whole nation of the Rohillas, which the grand salesman, without a pretence of quarrel, and contrary to his own declared sense of duty and rectitude, sold to the same Sujah ul Dowlah. He sold the people to utter *extirpation*, for the sum of four hundred thousand pounds. Faithfully was the bargain performed on our side. Hafiz Rhamet, the most eminent of their chiefs, one of the bravest men of his time, and as famous throughout the east for the elegance of his literature, and the spirit of his poetical compositions (by which he supported the name of Hafiz) as for his courage, was invaded with an army of a hundred thousand men, and an English brigade. This man, at the head of inferior forces, was slain valiantly fighting for his country. His head was cut off, and delivered for money to a barbarian. His wife and children, persons of that rank, were seen begging a handful of rice through the English camp. The whole nation, with inconsiderable exceptions, was slaughtered or banished. The country was laid waste with fire and sword; and that land distinguished above most others, by the cheerful face of paternal government and protected labour, the chosen seat of cultivation and plenty, is now almost

throughout a dreary desert, covered with rushes and briars, and jungles full of wild beasts.

The British officer who commanded in the delivery of the people thus sold, felt some compunction at his employment. He represented these enormous excesses to the president of Bengal, for which he received a severe reprimand from the civil governour; and I much doubt whether the breach caused by the conflict, between the compassion of the military and the firmness of the civil governour be closed at this hour.

In Bengal, Seraja Dowla was sold to Mir Jaffier; Mir Jaffier was sold to Mir Cossim; and Mir Cossim was sold to Mir Jaffier again. The succession to Mir Jaffier was sold to his eldest son;—another son of Mir Jaffier, Mobarech ul Dowla, was sold to his step-mother—The Maratta empire was sold to Ragoba; and Ragoba was sold and delivered to the Peishwa of the Marattas. Both Ragoba and the Peishwa of the Marattas were offered to sale to the rajah of Berar. Scindia, the chief of Malva, was offered to sale to the same rajah; and the Subah of the Decan was sold to the great trader Mahomet Ali, nabob of Arcot. To the same nabob of Arcot they sold Hyder Ali and the kingdom of Mysore. To Mahomet Ali they twice sold the kingdom of Tanjore. To the same Mahomet Ali they sold at least twelve sovereign princes, called the Polygars. But to keep things even, the territory of Tinnivelly, belonging to their nabob, they would have sold to the Dutch; and to conclude the account of sales, their great customer, the nabob of Arcot himself, and his lawful succession, has been sold to his second son, Amir ul Omrah, whose character, views, and conduct, are in the accounts upon your table. It remains with you whether they shall finally perfect this last bargain.

All these bargains and sales were regularly attended with the waste and havock of the country, always by the buyer, and sometimes by the object of the sale. This was explained to you by the honourable

mover, when he stated the mode of paying debts due from the country powers to the company. An honourable gentleman, who is not now in his place, objected to his jumping near two thousand miles for an example. But the southern example is perfectly applicable to the northern claim, as the northern is to the southern; for, throughout the whole space of these two thousand miles, take your stand where you will, the proceeding is perfectly uniform, and what is done in one part will apply exactly to the other.

My second assertion is, that the company never has made a treaty which they have not broken. This position is so connected with that of the sales of provinces and kingdoms, with the negotiation of universal distraction in every part of India, that a very minute detail may well be spared on this point. It has not yet been contended, by any enemy to the reform, that they have observed any publick agreement. When I hear that they have done so in any one instance (which hitherto, I confess, I never heard alleged) I shall speak to the particular treaty. The governor general has even amused himself and the court of directors in a very singular letter to that board, in which he admits he has not been very delicate with regard to publick faith; and he goes so far as to state a regular estimate of the sums which the company would have lost, or never acquired, if the rigid ideas of publick faith entertained by his colleagues had been observed. \*The learned gentleman over against me has indeed saved me much trouble. On a former occasion he obtained no small credit, for the clear and forcible manner in which he stated what we have not forgot, and I hope he has not forgot, that universal systematick breach of treaties which had made the British faith proverbial in the east.

It only remains, sir, for me just to recapitulate some heads.—The treaty with the mogul, by which we stipulated to pay him 260,000*l.* annually, was

\* Mr. Dundas, lord advocate of Scotland.

broken. This treaty they have broken, and not paid him a shilling. They broke their treaty with him, in which they stipulated to pay 400,000*l.* a year to the soubah of Bengal. They agreed with the mogul, for services admitted to have been performed, to pay Nudjif Cawn a pension. They broke this article with the rest, and stopped also this small pension. They broke their treaties with the nizam, and with Hyder Ali. As to the Marattas, they had so many cross treaties with the states general of that nation, and with each of the chiefs, that it was notorious, that no one of these agreements could be kept without grossly violating the rest. It was observed, that if the terms of these several treaties had been kept, two British armies would at one and the same time have met in the field to cut each other's throats. The wars which desolate India, originated from a most atrocious violation of publick faith on our part. In the midst of profound peace, the company's troops invaded the Maratta territories, and surprised the island and fortress of Salsette. The Marattas nevertheless yielded to a treaty of peace, by which solid advantages were procured to the company. But this treaty, like every other treaty, was soon violated by the company. Again the company invaded the Maratta dominions. The disaster that ensued gave occasion to a new treaty. The whole army of the company was obliged, in effect, to surrender to this injured, betrayed, and insulted people. Justly irritated however, as they were, the terms which they prescribed were reasonable and moderate; and their treatment of their captive invaders, of the most distinguished humanity. But the humanity of the Marattas was of no power whatsoever to prevail on the company to attend to the observance of the terms dictated by their moderation. The war was renewed with greater vigour than ever; and such was their insatiable lust of plunder, that they never would have given ear to any terms of peace, if Hyder Ali had not broke through the Gauts, and rushing like a torrent into the Carnatick, swept away every thing in



his career. This was in consequence of that confederacy, which by a sort of miracle united the most discordant powers for our destruction, as a nation in which no other could put any trust, and who were the declared enemies of the human species.

It is very remarkable, that the late controversy between the several presidencies, and between them and the court of directors, with relation to these wars and treaties, has not been, which of the parties might be defended for his share in them; but on which of the parties the guilt of all this load of perfidy should be fixed. But I am content to admit all these proceedings to be perfectly regular, to be full of honour and good faith; and wish to fix your attention solely to that single transaction which the advocates of this system select for so transcendent a merit as to cancel the guilt of all the rest of their proceedings; I mean the late treaties with the Marattas.

I make no observation on the total cession of territory, by which they surrendered all they had obtained by their unhappy successes in war, and almost all they had obtained under the treaty of Poorunder. The restitution was proper, if it had been voluntary and seasonable. I attach on the spirit of the treaty, the dispositions it showed, the provisions it made for a general peace, and the faith kept with allies and confederates; in order that the house may form a judgment, from this chosen piece, of the use which has been made (and is likely to be made, if things continue in the same hands) of the trust of the federal powers of this country.

It was the wish of almost every Englishman, that the Maratta peace might lead to a general one; because the Maratta war was only a part of a general confederacy formed against us on account of the universal abhorrence of our conduct which prevailed in every state and almost in every house in India. Mr. Hastings was obliged to pretend some sort of acquiescence in this general and rational desire. He therefore consented, in order to satisfy the point of

Honour of the Marattas, that an article should be inserted to admit Hyder Ali to accede to the pacification. But observe, sir, the spirit of this man (which if it were not made manifest by a thousand things, and particularly by his proceedings with regard to lord Macartney) would be sufficiently manifest by this—What sort of article think you does he require this essential head of a solemn treaty of general pacification to be? In his instruction to Mr. Anderson, he desires him to admit “a *vague* article” in favour of Hyder. Evasion and fraud were the declared basis of the treaty. These *vague* articles intended for a more vague performance, are the things which have damned our reputation in India.

Hardly was this vague article inserted, than, without waiting for any act on the part of Hyder, Mr. Hastings enters into a negotiation with the Maratta chief, Scindia, for a partition of the territories of the prince who was one of the objects to be secured by the treaty. He was to be parcelled out in three parts—one to Scindia; one to the peishwa of the Marattas; and the third to the East India company, or to the old dealer and chapman, Mahomet Ali.

During the formation of this project, Hyder dies; and before his son could take any one step, either to conform to the tenour of the article, or to contravene it, the treaty of partition is renewed on the old footing, and an instruction is sent to Mr. Anderson to conclude it in form.

A circumstance intervened, during the pendency of this negotiation, to set off the good faith of the company with an additional brilliancy, and to make it sparkle and glow with a variety of splendid faces. General Matthews had reduced that most valuable part of Hyder's dominions called the Country of Biddnore. When the news reached Mr. Hastings he instructed Mr. Anderson to contend for an alteration in the treaty of partition, and to take the Biddnore country out of the common stock which was to be divided, and to keep it for the company.

The first ground for this variation was its being a separate conquest made before the treaty had actually taken place. Here was a new proof given of the fairness, equity, and moderation of the company. But the second of Mr. Hastings's reasons for retaining the Biddnore as a separate portion, and his conduct on that second ground, is still more remarkable. He asserted that that country could not be put into the partition stock, because general Matthews had received it on the terms of some convention which might be incompatible with the partition proposed. This was a reason in itself both honourable and solid; and it showed a regard to faith somewhere, and with some persons. But in order to demonstrate his utter contempt of the plighted faith which was alleged on one part as a reason for departing from it on another, and to prove his impetuous desire for sowing a new war, even in the prepared soil of a general pacification, he directs Mr. Anderson, if he should find strong difficulties impeding the partition, on the score of the subtraction of Biddnore, wholly to abandon that claim, and to conclude the treaty on the original terms. General Matthews's convention was just brought forward sufficiently to demonstrate to the Marattas the slippery hold which they had on their new confederate; on the other hand that convention being instantly abandoned, the people of India were taught that no terms on which they can surrender to the company are to be regarded, when further conquests are in view.

Next, sir, let me bring before you the pious care that was taken of our allies under that treaty which is the subject of the company's applauses. These allies were Ragonaut Row, for whom we had engaged to find a throne; the Guickwar (one of the Guzerat princes) who was to be emancipated from the Maratta authority, and to grow great by several accessions of dominion; and lastly, the rana of Gohud, with whom we had entered into a treaty of partition for eleven sixteenths of our joint conquests. Some of

these inestimable securities, called ~~upon~~ the articles, were inserted in favour of them all.

As to the first, the unhappy abdicated peishwa, and pretender to the Maratta throne, Ragonaut Row was delivered up to his people, with an article for safety, and some provision. This man, knowing how little vague the hatred of his countrymen was towards him, and well apprized of what black crimes he stood accused (among which our invasion of his country would not appear the least) took a mortal alarm at the security we had provided for him. He was thunderstruck at the article in his favour, by which he was surrendered to his enemies. He never had the least notice of the treaty; and it was apprehended that he would fly to the protection of Hyder Ali, or some other, disposed or able to protect him. He was therefore not left without comfort; for Mr. Anderson did him the favour to send a special messenger, desiring him to be of good cheer and to fear nothing. And his old enemy, Scindia, at our request, sent him a message equally well calculated to quiet his apprehensions.

By the same treaty the Guickwar was to come again, with no better security, under the dominion of the Maratta state. As to the rana of Gohud, a long negotiation depended for giving him up. At first this was refused by Mr. Hastings with great indignation; at another stage it was admitted as proper, because he had shown himself a most perfidious person. But at length a method of reconciling these extremes was found out, by contriving one of the usual articles in his favour. What I believe will appear beyond all belief, Mr. Anderson exchanged the final ratifications of that treaty by which the rana was nominally secured in his possessions, in the camp of the Maratta chief, Scindia, whilst he was (really, and not nominally) battering the castle of Gualior, which we had given, agreeably to treaty, to this deluded ally. Scindia had already reduced the town; and was at the very time, by various detachments, reducing, one after another, the fortresses of our

protected ally, as well as in the act of chastising all the rajahs who had assisted colonel Carnac in his invasion. I have seen in a letter from Calcutta, that the raja of Gohud's agent would have represented these hostilities which went hand in hand with the protecting treaty to Mr. Hastings; but he was not admitted to his presence.

In this manner the company has acted with their allies in the Maratta war. But they did not rest here; the Marattas were fearful lest the persons delivered to them by that treaty should attempt to escape into the British territories, and thus might elude the punishment intended for them, and by reclaiming the treaty, might stir up new disturbances. To prevent this, they desired an article to be inserted in the supplemental treaty, to which they had the ready consent of Mr. Hastings, and the rest of the company's representatives in Bengal. It was this, "That the English and Maratta governments mutually agree not to afford refuge to any *chiefs, merchants, or other persons*, flying for protection to the territories of the other." This was readily assented to, and assented to without any exception whatever, in favour of our surrendered allies. On their part a reciprocity was stipulated which was not unnatural for a government, like the company's to ask; a government, conscious that many subjects had been, and would in future, be driven to fly from its jurisdiction.

To complete the system of pacifick intention and publick faith, which predominate in these treaties, Mr. Hastings fairly resolved to put all peace, except on the terms of absolute conquest, wholly out of his own power. For, by an article in this second treaty with Scindia, he binds the company not to make any peace with Tippoo Saheb, without the consent of the peishwa of the Marattas; and binds Scindia to him by a reciprocal engagement. The treaty between France and England obliges us mutually to withdraw our forces, if our allies in India do not accede to the peace within four months; Mr. Hastings's treaty

obliges us to continue the war as long as the peishwa thinks fit. We are now in that happy situation, that the breach of the treaty with France, or the violation of that with the Marattas, is inevitable; and we have only to take our choice.

My third assertion, relative to the abuse made of the right of war and peace is, that there are none who have ever confided in us who have not been utterly ruined. The examples I have given of Ragonaut Row, of Guickwar, of the rana of Gohud, are recent. There is proof more than enough in the condition of the mogul; in the slavery and indigence of the nabob of Oude; the exile of the rajah of Benares; the beggary of the nabob of Bengal; the undone and captive condition of the rajah and kingdom of Tanjour; the destruction of the polygars; and lastly, in the destruction of the nabob of Arcot himself, who, when his dominions were invaded, was found entirely destitute of troops, provisions, stores, (and as he asserts) of money, being a million in debt to the company, and four millions to others: the many millions which he had extorted from so many extirpated princes and their desolated countries having, as he has frequently hinted, been expended for the ground rent of his mansion-house in an alley in the suburbs of Madras. Compare the condition of all these princes with the power and authority of all the Maratta states; with the independence and dignity of the soubah of the Decan; and the mighty strength, the resources, and the manly struggle of Hyder Ali; and then the house will discover the effects, on every power in India, of an easy confidence, or of a rooted distrust in the faith of the company.

These are some of my reasons, grounded on the abuse of the external political trust of that body, for thinking myself not only justified but bound to declare against those chartered rights which produce so many wrongs. I should deem myself the wickedest of men, if any vote of mine could contribute to the continuance of so great an evil.

Now, sir, according to the plan I proposed, I shall take notice of the company's internal government, as it is exercised first on the dependent provinces, and then as it affects those under the direct and immediate authority of that body. And here, sir, before I enter into the spirit of their interior government, permit me to observe to you, upon a few of the many lines of difference which are to be found between the vices of the company's government, and those of the conquerors who preceded us in India; that we may be enabled a little the better to see our way in an attempt to the necessary reformation.

The several irruptions of Arabs, Tartars, and Persians into India, were, for the greater part, ferocious, bloody, and wasteful in the extreme: our entrance into the dominion of that country, was, as generally, with small comparative effusion of blood; being introduced by various frauds and delusions, and by taking advantage of the incurable, blind, and senseless animosity, which the several country powers bear towards each other, rather than by open force. But the difference in favour of the first conquerors is this; the Asiatick conquerors very soon abated of their ferocity, because they made the conquered country their own. They rose or fell with the rise or fall of the territory they lived in. Fathers there deposited the hopes of their posterity; and children there beheld the monuments of their fathers. Here their lot was finally cast; and it is the natural wish of all, that their lot should not be cast in a bad land. Poverty, sterility, and desolation, are not a recreating prospect to the eye of man; and there are very few who can bear to grow old among the curses of a whole people. If their passion, or their avarice, drove the Tartar hordes to acts of rapacity or tyranny, there was time enough, even in the short life of man, to bring round the ill effects of an abuse of power upon the power itself. If hoards were made by violence and tyranny, they were still domestick hoards; and domestick profusion, or the rapine of a more powerful and prodigal hand, restored them to the people. With many

disorders, and with few political checks upon power, nature had still fair play; the sources of acquisition were not dried up; and therefore the trade, the manufactures, and the commerce of the country flourished. Even avarice and usury itself operated, both for the preservation and the employment of national wealth. The husbandman and manufacturer paid heavy interest, but then they augmented the fund from whence they were again to borrow. Their resources were dearly bought, but they were sure; and the general stock of the community grew by the general effort.

But under the English government all this order is reversed. The Tartar invasion was mischievous; but it is our protection that destroys India. It was their enmity, but it is our friendship. Our conquest there, after twenty years, is as crude as it was the first day. The natives scarcely know what it is to see the grey head of an Englishman. Young men (boys almost) govern there, without society, and without sympathy with the natives. They have no more social habits with the people, than if they still resided in England; nor indeed any species of intercourse but that which is necessary to making a sudden fortune, with a view to a remote settlement. Animated with all the avarice of age, and all the impetuosity of youth, they roll in one after another, wave after wave; and there is nothing before the eyes of the natives but an endless, hopeless prospect of new flights of birds of prey and passage, with appetites continually renewing for a food that is continually wasting. Every rupee of profit made by an Englishman is lost for ever to India. With us are no retributory superstitions, by which a foundation of charity compensates, through ages, to the poor, for the rapine and injustice of a day. With us no pride erects stately monuments which repair the mischiefs which pride had produced, and which adorn a country out of its own spoils. England has erected no churches, no



hospitals,\* no palaces, no schools; England has built no bridges, made no high roads, cut no navigations, dug out no reservoirs. Every other conquerour of every other description has left some monument, either of state or beneficence, behind him. Were we to be driven out of India this day, nothing would remain, to tell that it had been possessed, during the inglorious period of our dominion, by any thing ~~better~~ than the ouran-outang or the tiger.

There is nothing in the boys we send to India worse than the boys whom we are whipping at school, or that we see trailing a pike, or bending over a desk at home. But as English youth in India drink the intoxicating draught of authority and dominion before their heads are able to bear it, and as they are full grown in fortune long before they are ripe in principle, neither nature nor reason have any opportunity to exert themselves for remedy of the excesses of their premature power. The consequences of their conduct, which in good minds (and many of theirs are probably such) might produce penitence or amendment, are unable to pursue the rapidity of their flight. Their prey is lodged in England; and the cries of India are given to seas and winds, to be blown about, in every breaking up of the monsoon, over a remote and unhearing ocean. In India all the vices operate by which sudden fortune is acquired; in England are often displayed, by the same persons, the virtues which dispense hereditary wealth. Arrived in England, the destroyers of the nobility and gentry of a whole kingdom will find the best company in this nation, at a board of elegance and hospitality. Here the manufacturer and husbandman will bless the just and punctual hand that in India has torn the cloth from the loom, or wrested the scanty portion of rice and salt from the peasant of Bengal, or wrung from him the very opium in which he forgot his oppressions and his oppressor. They marry into your families;

\* The paltry foundation at Calcutta is scarcely worth naming as an exception.

they enter into your senate; they ease your estates by loans; they raise their value by demand; they cherish and protect your relations which lie heavy on your patronage; and there is scarcely a house in the kingdom that does not feel some concern and interest that makes all reform of our eastern government appear officious and disgusting; and, on the whole, a most discouraging attempt. In such an attempt you hurt those who are able to return kindness, or to resent injury. If you succeed, you save those who cannot so much as give you thanks. All these things show the difficulty of the work we have on hand; but they show its necessity too. Our Indian government is in its best state a grievance. It is necessary that the correctives should be uncommonly vigorous; and the work of men, sanguine, warm, and even impassioned in the cause. But it is an arduous thing to plead against abuses of a power which originates from your own country, and affects those whom we are used to consider as strangers.

I shall certainly endeavour to modulate myself to this temper; though I am sensible that a cold style of describing actions which appear to me in a very affecting light, is equally contrary to the justice due to the people, and to all genuine human feelings about them. I ask pardon of truth and nature for this compliance. But I shall be very sparing of epithets either to persons or things. It has been said (and, with regard to one of them, with truth) that Tacitus and Machiavel, by their cold way of relating enormous crimes, have in some sort appeared not to disapprove them; that they seem a sort of professors of the art of tyranny, and that they corrupt the minds of their readers by not expressing the detestation and horror that naturally belong to horrible and detestable proceedings. But we are in general, sir, so little acquainted with Indian details; the instruments of oppression under which the people suffer are so hard to be understood; and even the very names of the sufferers are so uncouth and strange to our ears, that it is very difficult for our sympathy to fix upon these ob-

jects. I am sure that some of us have come down stairs from the committee room, with impressions on our minds, which to us were the inevitable results of our discoveries; yet if we should venture to express ourselves in the proper language of our sentiments to other gentlemen, not at all prepared to enter into the cause of them, nothing could appear more harsh and dissonant, more violent and unaccountable, than our language and behaviour. All these circumstances are not, I confess, very favourable to the idea of our attempting to govern India at all. But there we are; there we are placed by the Sovereign Disposition, and we must do the best we can in our situation. The situation of man is the preceptor of his duty.

Upon the plan which I laid down, and to which I beg leave to return, I was considering the conduct of the company to those nations which are indirectly subject to their authority. The most considerable of the dependent princes is the nabob of Oude. \*My right honourable friend, to whom we owe the remedial bills on your table, has already pointed out to you, in one of the reports, the condition of that prince, and as it stood in the time he alluded to. I shall only add a few circumstances that may tend to awaken some sense of the manner in which the condition of the people is affected by that of the prince, and involved in it; and to show you, that when we talk of the sufferings of princes, we do not lament the oppression of individuals; and that in these cases the high and the low suffer together.

In the year 1779 the nabob of Oude represented, through the British resident at his court, that the number of company's troops stationed in his dominions was a main cause of his distress; and that all those which he was not bound by treaty to maintain should be withdrawn, as they had greatly diminished his revenue, and impoverished his country. I will read you, if you please, a few extracts from these representations.

\* Mr. Fox.

He states, "that the country and cultivation are abandoned; and this year in particular, from the excessive drought of the season, deductions of many lakhs having been allowed to the farmers, who are still left unsatisfied;" and then he proceeds with a long detail of his own distress, and that of his family, and all his dependants; and adds, "that the new raised brigade is not only quite useless to my government, but is moreover the cause of much loss, both in revenues and customs. The detached body of troops under European officers bring nothing but confusion to the affairs of my government, and are entirely their own masters." Mr. Middleton, Mr. Hastings's confidential resident, vouches for the truth of this representation in its fullest extent. "I am concerned to confess, that there is too good ground for this plea. *The misfortune has been general throughout the whole of the vizier's [the nabob of Oude] dominions, obvious to every body; and so fatal have been its consequences, that no person, of either credit or character, would enter into engagements with government for farming the country.*" He then proceeds to give strong instances of the general calamity, and its effects.

It was now to be seen what steps the governor general and council took for the relief of this distressed country, long labouring under the vexations of men, and now stricken by the hand of God. The case of a general famine is known to relax the severity even of the most rigorous government.—Mr. Hastings does not deny, or show the least doubt of the fact. The representation is humble, and almost abject. On this representation from a great prince, of the distress of his subjects, Mr. Hastings falls into a violent passion; such, as it seems, would be unjustifiable in any one who speaks of any part of his conduct. He declares, "that the demands, the time in which they were asserted, and the season in which they were made, are all equally alarming, and appear to him to require an adequate degree of firmness in this board, in opposition to them." He proceeds to

deal out very unreserved language, on the person and character of the nabob and his ministers. He declares, that in a division between him and the nabob, "*the strongest must decide.*" With regard to the urgent and instant necessity, from the failure of the crops, he says, "that *perhaps* expedients may be found for affording a *gradual* relief from the burthen of which he so heavily complains, and it shall be my endeavour to seek them out:" and, lest he should be suspected of too much haste to alleviate sufferings, and to remove violence, he says, "that these must be *gradually* applied, and their complete effect may be *distant*; and this I conceive is *all* he can claim of right."

This complete effect of his lenity is distant indeed. Rejecting this demand, as he calls the nabob's abject supplication, he attributes it, as he usually does all things of the kind, to the division in their government; and says, "this is a powerful motive with me (however inclined I might be, *upon any other occasion*, to yield to some part of his demand) to give them an *absolute and unconditional refusal* upon the present; and even to bring to punishment, if my influence can produce that effect, those incendiaries who have endeavoured to make themselves the instruments of division between us."

Here, sir, is much heat and passion; but no more consideration of the distress of the country, from a failure of the means of subsistence, and, if possible, the worst evil of a useless and licentious soldiery, than if they were the most contemptible of all trifles. A letter is written in consequence, in such a style of lofty despotism, as I believe has hitherto been unexampled and unheard of in the records of the east. The troops were continued. The *gradual* relief, whose effect was to be so *distant*, has never been substantially and beneficially applied—and the country is ruined.

Mr. Hastings, two years after, when it was too late, saw the absolute necessity of a removal of the intolerable grievance of this licentious soldiery, which,

under pretence of defending it, held the country under military execution. A new treaty and arrangement, according to the pleasure of Mr. Hastings, took place; and this new treaty was broken in the old manner, in every essential article. The soldiery were again sent, and again set loose. The effect of all his manœuvres, from which it seems he was sanguine enough to entertain hopes, upon the state of the country, he himself informs us, "*the event has proved the reverse of his hopes, and accumulation of distress, debasement, and dissatisfaction to the nabob; and disappointment and disgrace to me.*"—Every measure, which he had himself proposed, has been so conducted as to give him cause of displeasure; there are no officers established by which his affairs could be regularly conducted; mean, incapable, and indigent men have been appointed. A number of the districts without authority, and without the means of personal protection; some of them have been murdered by the zemindars, and those zemindars, instead of punishment, have been permitted to retain their zemindari, with independent authority; *all* the other zemindars suffered to rise up in rebellion, and to insult the authority of the sircar, without any attempt made to suppress them; and the company's debt, instead of being discharged by the assignments and extraordinary sources of money provided for that purpose, *is likely to exceed even the amount at which it stood at the time in which the arrangement with his excellency was concluded.*" The house will smile at the resource on which the directors take credit as such a certainty in their curious account.

This is Mr. Hastings's own narrative of the effects of his own settlement. This is the state of the country which we have been told is in perfect peace and order; and, what is curious, he informs us, that *every part of this was foretold to him in the order and manner in which it happened*, at the very time he made his arrangement of men and measures.

The invariable course of the company's policy is this: Either they set up some prince too odious to

maintain himself without the necessity of their assistance; or they soon render him odious, by making him the instrument of their government. In that case troops are bountifully sent to him to maintain his authority. That he should have no want of assistance, a civil gentleman, called a resident, is kept at his court, who, under pretence of providing stipend for the pay of these troops, gets assignments on the revenue into his hands. Under his provident management, debts soon accumulate; new assignments are made for these debts; until, step by step, the whole revenue, and with it the whole power of the country, is delivered into his hands. The military do not behold without a virtuous emulation the moderate gains of the civil department. They feel that, in a country driven to a habitual rebellion by the civil government, the military is necessary; and they will not permit their services to go unrewarded. Tracts of country are delivered over to their discretion. Then it is found proper to convert their commanding officers into farmers of revenue. Thus between the well paid civil, and well rewarded military establishment, the situation of the natives may be easily conjectured. The authority of the regular and lawful government is every where and in every point extinguished. Disorders and violences arise; they are repressed by other disorders and other violences. Wherever the collectors of the revenue, and the farming colonels and majors move, ruin is about them, rebellion before and behind them. The people in crowds fly out of the country; and the frontier is guarded by lines of troops, not to exclude an enemy, but to prevent the escape of the inhabitants.

By these means, in the course of not more than four or five years, this once opulent and flourishing country, which, by the accounts given in the Bengal consultations, yielded more than three crore of Sicca rupees, that is, above three millions sterling annually, is reduced, as far as I can discover, in a matter purposely involved in the utmost perplexity, to less than

one million three hundred thousand pounds, and that exacted by every mode of rigour that can be devised. To complete the business, most of the wretched remnants of this revenue are mortgaged, and delivered into the hands of the usurers at Benares (for there alone are to be found some lingering remains of the ancient wealth of these regions) at an interest of near *thirty per cent. per annum*.

The revenues in this manner failing, they seized upon the estates of every person of eminence in the country, and under the name of *resumption*, confiscated their property. I wish, sir, to be understood universally and literally, when I assert, that there is not left one man of property and substance for his rank, in the whole of these provinces, in provinces which are nearly the extent of England and Wales taken together. Not one landholder, not one banker, not one merchant, not one even of those who usually perish last, the *ultimum moriens* in a ruined state, no one farmer of revenue.

One country for a while remained, which stood as an island in the midst of the grand waste of the company's dominion. My right honourable friend, in his admirable speech on moving the bill, just touched the situation, the offences, and the punishment of a native prince, called Fizulla Khan. This man, by policy and force, had protected himself from the general extirpation of the Rohilla chiefs. He was secured (if that were any security) by a treaty. It was stated to you, as it was stated by the enemies of that unfortunate man—"that the whole of his country is what the whole country of the Rohillas *was*, cultivated like a garden, without one neglected spot in it."—Another accuser says, "Fyzoolah Khan, though a bad soldier (that is the true source of his misfortune) has approved himself a good *aumil*; having, it is supposed, in the course of a few years, at least *doubled* the population and revenue of his country." In another part of the correspondence he is charged with making his country an asylum for the oppressed peasants, who fly from the territories of Oude. The



improvement of his revenue, arising from this single crime (which Mr. Hastings considers as tantamount to treason) is stated at a hundred and fifty thousand pounds a year.

Dr. Swift somewhere says, that he who could make two blades of grass grow where but one grew before, was a greater benefactor to the human race than all the politicians that ever existed. This prince, who would have been deified by antiquity, who would have been ranked with Osiris, and Bacchus, and Ceres, and the divinities most propitious to men, was, for those very merits, by name attacked by the company's government, as a cheat, a robber, a traitor. In the same breath in which he was accused as a rebel, he was ordered at once to furnish 5,000 horse. On delay, or (according to the technical phrase, when any remonstrance is made to them) "*on evasion*," he was declared a violator of treaties, and every thing he had was to be taken from him.—Not one word, however, of horse in this treaty.

The territory of this Fizulla Khan, Mr. Speaker, is less than the county of Norfolk. It is an inland country, full seven hundred miles from any sea-port, and not distinguished for any one considerable branch of manufacture whatsoever. From this territory several very considerable sums had at several times been paid to the British resident. The demand of cavalry, without a shadow or decent pretext of right, amounted to three hundred thousand a year more, at the lowest computation; and it is stated, by the last person sent to negotiate, as a demand of little use, if it could be complied with; but that the compliance was impossible, as it amounted to more than his territories could supply, if there had been no other demand upon him—three hundred thousand pounds a year from an inland country not so large as Norfolk!

The thing most extraordinary was to hear the culprit defend himself from the imputation of his virtues, as if they had been the blackest offences. He extenuated the superiour cultivation of his coun-

try. He denied its population. He endeavoured to prove that he had often sent back the poor peasant that sought shelter with him.—I can make no observation on this.

After a variety of extortions and vexations, too fatiguing to you, too disgusting to me, to go through with, they found "that they ought to be in a better state to warrant forcible means;" they therefore contented themselves with a gross sum of 150,000 pounds for their present demand. They offered him, indeed, an indemnity from their exactions in future for three hundred thousand pounds more. But he refused to buy their securities; pleading (probably with truth) his poverty: but if the plea were not founded, in my opinion very wisely; not choosing to deal any more in that dangerous commodity of the company's faith; and thinking it better to oppose distress and unarmed obstinacy to uncoloured exaction, than to subject himself to be considered as a cheat, if he should make a treaty in the least beneficial to himself.

Thus they executed an exemplary punishment on Fizulla Khan for the culture of his country. But, conscious that the prevention of evils is the great object of all good regulation, they deprived him of the means of increasing that criminal cultivation in future, by exhausting his coffers; and, that the population of his country should no more be a standing reproach and libel on the company's government, they bound him, by a positive engagement, not to afford any shelter whatsoever to the farmers and labourers who should seek refuge in his territories, from the exactions of the British residents in Oude. When they had done all this effectually, they gave him a full and complete acquittance from all charges of rebellion, or of any intention to rebel, or of his having originally had any interest in, or any means of rebellion.

These intended rebellions are one of the company's standing resources. When money has been thought to be heaped up any where, its owners are universally

accused of rebellion, until they are acquitted of their money and their treasons at once. The money once taken, all accusation, trial, and punishment ends. It is so settled a resource, that I rather wonder how it comes to be omitted in the directors' account; but I take it for granted this omission will be supplied in their next edition.

The company stretched this resource to the full extent, when they accused two old women, in the remotest corner of India (who could have no possible view or motive to raise disturbances) of being engaged in rebellion, with an intent to drive out the English nation, in whose protection, purchased by money and secured by treaty, rested the sole hope of their existence. But the company wanted money, and the old women *must* be guilty of a plot. They were accused of rebellion, and they were convicted of wealth. Twice had great sums been extorted from them, and as often had the British faith guaranteed the remainder. A body of British troops, with one of the military farmers general at their head, was sent to seize upon the castle in which these helpless women resided. Their chief eunuchs, who were their agents, their guardians, protectors, persons of high rank, according to the eastern manners, and of great trust, were thrown into dungeons, to make them discover their hidden treasures; and there they lie at present. The lands assigned for the maintenance of the women were seized and confiscated. Their jewels and effects were taken, and set up to a pretended auction in an obscure place, and bought at such a price as the gentlemen thought proper to give. No account has ever been transmitted of the articles or produce of this sale. What money was obtained is unknown, or what terms were stipulated for the maintenance of these despoiled and forlorn creatures; for by some particulars it appears as if an engagement of the kind was made.

Let me here remark, once for all, that though the act of 1773 requires that an account of all proceedings should be diligently transmitted, that this, like all the

other injunctions of the law, is totally despised; and that half at least of the most important papers are intentionally withheld.

I wish you, sir, to advert particularly, in this transaction, to the quality and the numbers of the persons spoiled, and the instrument by whom that spoil was made. These ancient matrons, called the *bégums* or princesses, were of the first birth and quality in India, the one mother, the other wife, of the late nabob of Oude, Sujah Dowlah, a prince possessed of extensive and flourishing dominions, and the second man in the Mogul empire. This prince, suspicious, and not unjustly suspicious, of his son and successour, at his death committed his treasures and his family to the British faith. That family and household, consisted of *two thousand women*; to which were added two other *seraglios* of near kindred, and said to be extremely numerous, and, as I am well informed, of about fourscore of the nabob's children, with all the eunuchs, the ancient servants, and a multitude of the dependants of his splendid court. These were all to be provided, for present maintenance and future establishment, from the lands assigned as dower, and from the treasures which he left to these matrons, in trust for the whole family.

So far as to the objects of the spoil. The *instrument* chosen by Mr. Hastings to despoil the relict of Sujah Dowlah was *her own son*, the reigning nabob of Oude. It was the pious hand of a son that was selected to tear from his mother and grandmother the provision of their age, the maintenance of his brethren, and of all the ancient household of his father. [Here a laugh from some young members.] The laugh is *seasonable*, and the occasion decent and proper.

By the last advices something of the sum extorted remained unpaid. The women in despair refused to deliver more, unless their lands are restored, and their ministers released from prison: but Mr. Hastings and his council, steady to their point, and consistent to the last in their conduct, write

to the resident to stimulate the son to accomplish the filial acts he had brought so near to their perfection. "We desire," say they in their letter to the resident, written so late as March last, "that you will inform us if any, and what means, have been taken for recovering the balance due from the begum [princess] at Fizabad; and that, if necessary, you *recommend* it to the vizier to enforce the *most effectual means* for that purpose."

What their effectual means of enforcing demands on women of high rank and condition are, I shall show you, sir, in a few minutes; when I represent to you another of these plots and rebellions, which, *always*, in India though so *rarely* any where else, are the offspring of an easy condition, and hoarded riches.

Benares is the capital city of the Indian religion. It is regarded as holy by a particular and distinguished sanctity; and the Gentoos in general think themselves as much obliged to visit it once in their lives as the Mahometans to perform their pilgrimage to Mecca. By this means that city grew great in commerce and opulence; and so effectually was it secured by the pious veneration of that people, that in all wars and in all violences of power, there was so sure an asylum, both for poverty and wealth (as it were under a divine protection) that the wisest laws and best assured free constitution could not better provide for the relief of the one, or the safety of the other; and this tranquillity influenced to the greatest degree the prosperity of all the country, and the territory of which it was the capital. The interest of money there was not more than half the usual rate in which it stood in all other places. The reports have fully informed you of the means and of the terms in which this city and the territory called Gazipour, of which it was the head, came under the sovereignty of the East India company.

If ever there was a subordinate dominion pleasantly circumstanced to the superiour power, it was

this; a large rent or tribute, to the amount of two hundred and sixty thousand pounds a year, was paid in monthly instalments with the punctuality of a dividend at the bank. If ever there was a prince who could not have an interest in disturbances, it was its sovereign, the rajah Cheit Sing. He was in possession of the capital of his religion, and a willing revenue was paid by the devout people who resorted to him from all parts. His sovereignty and his independence, except his tribute, was secured by every tie. His territory was not much less than half of Ireland, and displayed in all parts a degree of cultivation, ease, and plenty, under his frugal and paternal management, which left him nothing to desire, either for honour or satisfaction.

This was the light in which this country appeared to almost every eye. But Mr. Hastings beheld it askance. Mr. Hastings tells us that it was *reported* of this Cheit Sing, that his father left him a million sterling, and that he made annual accessions to the hoard. Nothing could be so obnoxious to indigent power. So much wealth could not be innocent. The house is fully acquainted with the unfounded and unjust requisitions which were made upon this prince. The question has been most ably and conclusively cleared up in one of the reports of the select committee, and in an answer of the court of directors to an extraordinary publication against them by their servant, Mr. Hastings. But I mean to pass by these exactions, as if they were perfectly just and regular; and, having admitted them, I take what I shall now trouble you with, only as it serves to show the spirit of the company's government, the mode in which it is carried on, and the maxims on which it proceeds.

Mr. Hastings, from whom I take the doctrine, endeavours to prove that Cheit Sing was no sovereign prince; but a mere zemindar or common subject, holding land by rent. If this be granted to him, it is next to be seen under what terms he is of opinion such a landholder, that is a British subject, holds his

life and property under the company's government. It is proper to understand well the doctrines of the person whose administration has lately received such distinguished approbation from the company. His doctrine is—“that the company, or the *person delegated by it*, holds an *absolute* authority over such zemindars; that he [such a subject] owes an *implicit* and *unreserved* obedience to its authority, at the *forfeiture* even of his *life and property* at the *DISCRETION* of those who held or *fully represented* the sovereign authority;—and that *these* rights are *fully delegated to him, Mr. Hastings.*”

Such is a British governour's idea of the condition of a great zemindar holding under a British authority; and this kind of authority he supposes *fully delegated to him*; though no such delegation appears in any commission, instruction, or act of parliament. At his *discretion* he may demand, of the substance of any zemindat over and above his rent or tribute, even what he pleases, with a sovereign authority; and if he does not yield an *implicit, unreserved* obedience to all his commands, he forfeits his lands, his life, and his property, at Mr. Hastings's *discretion*. But, extravagant, and even frantick as these positions appear, they are less so than what I shall now read to you; for he asserts, that if any one should urge an exemption from more than a stated payment, or should consider the deeds, which passed between him and the board, “as bearing *the quality and force* of a treaty between equal states,” he says, “that such an opinion is itself criminal to the state of which he is a subject; and that he was himself amenable to its justice, if he gave *countenance* to such a *belief*.” Here is a new species of crime invented, that of countenancing a belief—but a belief of what? A belief of that which the court of directors, Hastings's masters, and a committee of this house, have decided as this prince's indisputable right.

But supposing the rajah of Benares to be a mere subject, and that subject a criminal of the highest form; let us see what course was taken by an upright

English magistrate. Did he cite this culprit before his tribunal? Did he make a charge? Did he produce witnesses? These are not forins; they are parts of substantial and eternal justice. No, not a word of all this. Mr. Hastings concludes him, *in his own mind*, to be guilty; he makes this conclusion on reports, on hearsays, on appearances, on rumours, on conjectures, on presumptions; and even these never once hinted to the party, nor publicly to any human being, till the whole business was done.

But the governour tells you his motive for this extraordinary proceeding, so contrary to every mode of justice towards either a prince or a subject, fairly and without disguise, and he puts into your hands the key of his whole conduct:—"I will suppose for a moment, that I have acted with unwarrantable rigour towards Cheit Sing, and even with injustice. Let my MOTIVE be consulted. I left Calcutta, impressed with a belief that *extraordinary means* were necessary, and those exerted with a *steady hand*, to preserve the company's interests from sinking under the accumulated weight which oppressed them. I saw a *political necessity* for curbing the *overgrown* power of a great member of their dominion, and for *making it contribute to the relief of their pressing exigencies*." This is plain speaking; after this, it is no wonder that the rajah's wealth and his offence, the necessities of the judge, and the opulence of the delinquent, are never separated, through the whole of Mr. Hastings's apology. "The justice and *policy* of exacting a *large pecuniary mulct*." The resolution "to draw from his *guilt* the means of *relief* to the company's distresses." His determination "to make him *pay largely* for his pardon, or to execute a severe vengeance for *past delinquency*." That "as his *wealth was great*, and the *company's exigencies* pressing, he thought it a measure of justice and policy to exact from him a large pecuniary mulct for *their relief*."—"The sum (says Mr. Wheler, bearing evidence, at his desire, to his intentions) "to which the governour declared his resolution to extend his fine, was forty or fifty



lacks, *that is four or five hundred thousand pounds*; and that if he refused, he was to be removed from his zemindary entirely; or by taking possession of his forts, to obtain, *out of the treasure deposited in them*, the above sum for the company."

Crimes so convenient, crimes so politick, crimes so necessary, crimes so alleviating of distress, can never be wanting to those who use no process, and who produce no proofs.

But there is another serious part (what is not so?) in this affair. Let us suppose that the power, for which Mr. Hastings contends, a power which no sovereign ever did, nor ever can vest in any of his subjects, namely, his own sovereign authority, to be conveyed by the act of parliament to any man or body of men whatsoever; it certainly was never given to Mr. Hastings. The powers given by the act of 1773 were formal and official; they were given not to the governour general, but to the major vote of the board, as a board, on discussion amongst themselves, in their publick character and capacity; and their acts in that character and capacity were to be ascertained by records and minutes of council. The despotick acts exercised by Mr. Hastings were done merely in his *private* character; and, if they had been moderate and just, would still be the acts of an usurped authority, and without any one of the legal modes of proceeding which could give him competence for the most trivial exertion of power. There was no proposition or deliberation whatsoever in council, no minute on record, by circulation or otherwise, to authorize his proceedings. No delegation of power to impose a fine, or to take any step to deprive the rajah of Benares of his government, his property, or his liberty. The minutes of consultation assign to his journey a totally different object, duty, and destination. Mr. Wheler, at his desire, tells us long after, that he had a confidential conversation with him on various subjects, of which this was the principal, in which Mr. Hastings notified to him his secret intentions; "and that he *bespoke* his support

of the measures which he intended to pursue towards him (the rajah.)" This confidential discourse, and *bespeaking* of support, could give him no power, in opposition to an express act of parliament, and the whole tenour of the orders of the court of directors.

In what manner the powers thus usurped were employed, is known to the whole world. All the house knows, that the design on the rajah proved as unfruitful as it was violent. The unhappy prince was expelled, and his more unhappy country was enslaved and ruined; but not a rupee was acquired. Instead of treasure to recruit the company's finances, wasted by their wanton wars and corrupt jobs, they were plunged into a new war which shook their power in India to its foundation; and, to use the governour's own happy simile, might have dissolved it like a magick structure, if the talisman had been broken.

But the success is no part of my consideration, who should think just the same of this business, if the spoil of one rajah had been fully acquired and faithfully applied to the destruction of twenty other rajahs. Not only the arrest of the rajah in his palace was unnecessary and unwarrantable, and calculated to stir up any manly blood which remained in his subjects; but the despotick style, and the extreme insolence of language and demeanour, used to a person of great condition among the politest people in the world, was intolerable. Nothing aggravates tyranny so much as contumely. *Quicquid superbia in contumeliis* was charged by a great man of antiquity, as a principal head of offence against the governour general of that day. The unhappy people were still more insulted. A relation, but an *enemy* to the family, a notorious robber and villain, called Ussaun Sing, kept as a hawk in a mew, to fly upon this nation, was set up to govern there, instead of a prince honoured and beloved. But when the business of insult was accomplished the revenue was too serious a concern to be intrusted to such hands. Another was set up in his place, as guardian to an infant.

But here, sir, mark the effect of all these *extraordinary* means, of all this policy and justice. The revenues which had been hitherto paid with such astonishing punctuality, fell into arrear. The new prince guardian was deposed without ceremony; and with as little, cast into prison. The government of that once happy country has been in the utmost confusion ever since such good order was taken about it. But to complete the contumely offered to this undone people; and to make them feel their servitude in all its degradation, and all its bitterness, the government of their sacred city, the government of that Benares which had been so respected by Persian and Tartar conquerors, though of the Mussulman persuasion, that, even in the plenitude of their pride, power, and bigotry, no magistrate of that sect entered the place, was now delivered over by English hands to a Mahometan; and an Ali Ibrahim Khan was introduced, under the company's authority, with power of life and death, into the sanctuary of the Gentoo religion.

After this, the taking off a slight payment, cheerfully made by pilgrims to a chief of their own rites, was represented as a mighty benefit. It remains only to show, through the conduct in this business, the spirit of the company's government, and the respect they pay towards other prejudices not less regarded in the east than those of religion; I mean the reverence paid to the female sex in general, and particularly to women of high rank and condition. During the general confusion of the country of Gazypore, Panna, the mother of Cheit Sing, was lodged with her train in a castle called Bidge Gur, in which were likewise deposited a large portion of the treasures of her son, or more probably her own. To whomsoever they belonged was indifferent; for though no charge of rebellion was made on this woman (which was rather singular, as it would have cost nothing) they were resolved to secure her with her fortune. The castle was besieged by major Popham.

There was no great reason to apprehend that soldiers ill paid, that soldiers who thought they had been defrauded of their plunder on former services of the same kind, would not have been sufficiently attentive to the spoil they were expressly come for; but the gallantry and generosity of the profession was justly suspected, as being likely to set bounds to military rapaciousness. The company's first civil magistrate discovered the greatest uneasiness lest the women should have any thing preserved to them. Terms, tending to put some restraint on military violence, were granted. He writes a letter to Mr. Popham, referring to some letter written before to the same effect, which I do not remember to have seen; but it shows his anxiety on this subject. Hear himself:—

“I think *every* demand she has made on you, except that of safety and respect to her person, is unreasonable. If the reports brought to me are true, your rejecting her offers, or *any negotiation*, would soon obtain you the fort upon your own terms. I apprehend she will attempt to *defraud the captors of a considerable part of their booty, by being suffered to retire without examination*. But this is your concern, not mine. I should *be very sorry* that your officers and soldiers lost *any* part of the reward to which they are so well entitled; but you must be the best judge of the *promised* indulgence to the ranny: what you have engaged for I will certainly ratify; but as to suffering the ranny to hold the purgunna of Hurlich, or any other zemindary, without being subject to the authority of the zemindar, or *any lands whatsoever*, or indeed making *any* condition with her for a *provision*, I will *never consent*.”

Here your governour stimulates a rapacious and licentious soldiery to the personal search of women, lest these unhappy creatures should avail themselves of the protection of their sex to secure any supply for their necessities; and he positively orders that no stipulation should be made for any provision for them. The widow and mother of a prince, well informed of her miserable situation, and the cause of it,

a woman of this rank became a suppliant to the domestick servant of Mr. Hastings (they are his own words that I read) " imploring his intercession, *that she may be relieved from the hardships and dangers of her present situation*; and offering to surrender the fort, and the *treasure and valuable effects* contained in it, provided she can be assured of *safety and protection to her person and honour*, and to that of her family and attendants." He is so good as to consent to this, " provided she surrenders every thing of value, with the reserve *only* of such articles as *you shall think necessary* to her condition, or as *you yourself* shall be disposed to indulge her with.—But should she refuse to execute the promise she has made, or delay it beyond the term of twenty-four hours, it is *my positive injunction*, that you immediately put a stop to any further intercourse or negotiation with her, and on no pretext renew it. If she disappoints or *trifles* with me, after I have subjected *my duan* to the disgrace of returning ineffectually, and of course myself to discredit, I shall consider it as a *woman's affront* and indignity *which I can never forgive*; nor will I grant her *any* conditions whatever, but leave her exposed to *those dangers* which she has chosen to risk, rather than trust to the clemency and generosity of our government. I think she cannot be ignorant of these consequences, and will not venture to incur them; and it is for this reason I place a dependance on her offers, and have consented to send *my duan* to her." The dreadful secret hinted at by the merciful governor in the latter part of the letter, is well understood in India; where those who suffer corporeal indignities, generally expiate the offences of others with their own blood. However, in spite of all these, the temper of the military did, some way or other, operate. They came to terms which have never been transmitted. It appears that a *fifteenth per cent.* of the plunder was reserved to the captives, of which the unhappy mother of the prince of Benares was to have a share. This ancient matron, born to better things [a laugh from certain young gentlemen]—I see no cause for

this mirth. A good author of antiquity reckons among the calamities of his time, *Nobilissimarum feminarum exilia et fugas*. I say, sir, this ancient lady was compelled to quit her house with three hundred helpless women, and a multitude of children in her train; but the lower sort in the camp it seems could not be restrained. They did not forget the good lessons of the governour general. They were unwilling "to be defrauded of a considerable part of their booty, by suffering them to pass without examination."—They examined them, sir, with a vengeance, and the sacred protection of that awful character, Mr. Hastings's maitre d'hotel, could not secure them from insult and plunder. Here is Pop-ham's narrative of the affair:—"The ranny came out of the fort, with her family and dependants, the 10th at night, owing to which such attention was not paid to her as I wished; and I am exceedingly sorry to inform you, that the licentiousness of our followers was beyond the bounds of control; for, notwithstanding all I could do, her people were plundered on the road of most of the things which they brought out of the fort, by which means one of the articles of surrender has been much infringed. The distress I have felt upon this occasion cannot be expressed, and can only be allayed by a firm performance of the other articles of the treaty, which I shall make it my business to enforce.

"The suspicions which the officers had of treachery, and the delay made to our getting possession, had enraged them, as well as the troops, so much, that the treaty was at first regarded as void, but this determination was soon succeeded by pity and compassion for the unfortunate besieged."—After this comes, in his due order, Mr. Hastings; who is full of sorrow and indignation, &c. &c. &c. according to the best and most authentick precedents established upon such occasions.

The women being thus disposed of, that is, completely despoiled, and pathetically lamented, Mr. Hastings at length recollected the great object of his

enterprise, which, during his zeal lest the officers and soldiers should lose any part of their reward, he seems to have forgot; that is to say, "to draw from the rajah's guilt the means of relief to the company's distresses." This was to be the strong hold of his defence. This compassion to the company, he knew by experience would sanctify a great deal of rigour towards the natives. But the military had distresses of their own, which they considered first. Neither Mr. Hastings's authority, nor his supplications, could prevail on them to assign a shilling to the claim he made on the part of the company. They divided the booty amongst themselves. Driven from his claim, he was reduced to petition for the spoil as a loan. But the soldiers were too wise to venture as a loan, what the borrower claimed as a right. In defiance of all authority they shared amongst themselves about two hundred thousand pounds sterling, besides what had been taken from the women.

In all this there is nothing wonderful. We may rest assured, that when the maxims of any government establish among its resources extraordinary means, and those exerted with a strong hand, that strong hand will provide those extraordinary means for itself. Whether the soldiers had reason or not (perhaps much might be said for them) certain it is, the military discipline of India was ruined from that moment; and the same rage for plunder, the same contempt of subordination which blasted all the hopes of extraordinary means from your strong hand at Benares, have very lately lost you an army in Mysore. This is visible enough from the accounts in the last Gazette.

There is no doubt but that the country and city of Benares, now brought into the same order, will very soon exhibit if it does not already display, the same appearance with those countries and cities which are under better subjection. A great master, Mr. Hastings, has himself been at the pains of drawing a picture of one of these countries, I mean the province and city of Farruckabad. There is no reason to

question his knowledge of the facts; and his authority (on this point at least) is above all exception, as well for the state of the country, as for the cause. In his minute of consultation, Mr. Hastings describes forcibly the consequences which arise from the degradation into which we have sunk the native government. "The total want (says he) of all order, regularity, or authority, in his (the nabob of Farruckabad's) government, and to which, among other obvious causes, it may no doubt be owing that the country of Farruckabad is become *almost an entire waste, without cultivation or inhabitants*; that the capital, which, but a very short time ago, was distinguished as one of the most populous and opulent commercial cities in Hindostan, at present exhibits nothing but *scenes of the most wretched poverty, desolation and misery*; and that the nabob *himself*, though in the possession of a tract of country which, with only common care, is notoriously capable of yielding an annual revenue of between thirty and forty lacks, (three or four hundred thousand pounds) with *no military establishment* to maintain, scarcely commands *the means of a bare subsistence*."

This is a true and unexaggerated picture, not only of Farruckabad, but of at least three fourths of the country which we possess, or rather lay waste in India. Now, sir, the house will be desirous to know for what purpose this picture was drawn. It was for a purpose, I will not say laudable, but necessary; that of taking the unfortunate prince and his country out of the hands of a sequestrator sent thither by the nabob of Oude, the mortal enemy of the prince thus ruined, and to protect him by means of a British resident, who might carry his complaints to the superior resident at Oude, or transmit them to Calcutta. But mark how the reformer persisted in his reformation. The effect of the measure was better than was probably expected. The prince began to be at ease; the country began to recover; and the revenue began to be collected. These were alarming circumstances. Mr. Hastings not only recalled the resident, but he



entered into a formal stipulation with the nabob of Oude, never to send an English subject again to Farruckabad; and thus the country, described as you have heard by Mr. Hastings, is given up for ever to the very persons to whom he had attributed its ruin, that is, to the Sezawals or sequestrators of the nabob of Oude.

Such was the issue of the first attempt to relieve the distresses of the dependent provinces. I shall close what I have to say on the condition of the northern dependencies, with the effect of the last of these attempts. You will recollect, sir, the account I have, not long ago, stated to you as given by Mr. Hastings, of the ruined condition of the destroyer of others, the nabob of Oude, and of the recal, in consequence, of Hannay, Middleton, and Johnson. When the first little sudden gust of passion against these gentlemen was spent, the sentiments of old friendship began to revive. Some healing conferences were held between them and the superiour government. Mr. Hannay was permitted to return to Oude; but death prevented the further advantages intended for him, and the future benefits proposed for the country by the provident care of the council general.

One of these gentlemen was accused of the grossest peculations. Two of them, by Mr. Hastings himself, of what he considered as very gross offences. The court of directors were informed, by the governor general and council, that a severe inquiry would be instituted against the two survivors; and they requested that court to suspend its judgment, and to wait the event of their proceedings. A mock inquiry has been instituted, by which the parties could not be said to be either acquitted or condemned. By means of the bland and conciliatory dispositions of the charter governours, and proper private explanations, the publick inquiry has in effect died away, the supposed peculators and destroyers of Oude repose in all security in the bosoms of their accusers; whilst others succeed to them to be instructed by their example.

It is only to complete the view I proposed of the conduct of the company, with regard to the dependent provinces, that I shall say *any* thing at all of the Carnatick, which is the scene, if possible, of greater disorder than the northern provinces. Perhaps it were better to say of this centre and metropolis of abuse, whence all the rest in India and in England diverge; from whence they are fed and methodized, what was said of Carthage—*de Carthagine satius est silere quam parum dicere*. This country, in all its denominations, is about 46,000 square miles. It may be affirmed universally, that not one person of substance or property, landed, commercial, or monied, excepting two or three bankers, who are necessary deposits and distributors of the general spoil, is left in all that region. In that country the moisture, the bounty of Heaven, is given but at a certain season. Before the era of our influence, the industry of man carefully husbanded that gift of God. The Gentoos preserved, with a provident and religious care, the precious deposit of the periodical rain in reservoirs, many of them works of royal grandeur; and from these, as occasion demanded, they fructified the whole country. To maintain these reservoirs, and to keep up an annual advance to the cultivators, for seed and cattle, formed a principal object of the piety and policy of the priests and rulers of the Gentoos religion.

This object required a command of money; and there was no pollam, or castle, which in the happy days of the Carnatick was without some hoard of treasure, by which the governors were enabled to combat with the irregularity of the seasons, and to resist or to buy off the invasion of an enemy. In all the cities were multitudes of merchants and bankers, for all occasions of monied assistance; and on the other hand the native princes were in condition to obtain credit from them. The manufacturer was paid by the return of commodities, or by imported money, and not, as at present, in the taxes that had been originally exacted from his industry. In aid of casual

distress, the country was full of choultries, which were inns and hospitals, where the traveller and the poor were relieved. All ranks of people had their place in the publick concern, and their share in the common stock and common prosperity; but *the chartered rights of men*, and the right which it was thought proper to set up in the nabob of Arcot, introduced a new system. It was their policy to consider hoards of money as crimes; to regard moderate rents as frauds on the sovereign; and to view, in the lesser princes, any claim of exemption from more than settled tribute, as an act of rebellion. Accordingly all the castles were, one after the other, plundered and destroyed. The native princes were expelled; the hospitals fell to ruin; the reservoirs of water went to decay; the merchants, bankers, and manufacturers disappeared; and sterility, indigence, and depopulation, overspread the face of these once flourishing provinces.

The company was very early sensible of these mischiefs, and of their true cause. They gave precise orders that the native princes, called polygars, should *not be extirpated*.—That the rebellion [so they choose to call it] of the polygars, may, they fear, *with too much justice*, be attributed to the mal-administration of the nabob's collectors." That "they observe with concern, that their troops have been put to *disagreeable services*." They might have used a stronger expression without impropriety. But they make amends in another place. Speaking of the polygars, the directors say, that "it was repugnant to humanity to *force* them to such dreadful extremities *as they underwent*." That some examples of severity *might* be necessary, "when they fell into the nabob's hands," and *not by the destruction of the country*. "That *they fear* his government is *none of the mildest*; and that there is *great oppression* in collecting his revenues." They state, that the wars in which he has involved the Carnatick, had been a cause of its distresses. "That these distresses have been certainly great; but those by *the nabob's oppressions* we believe

*to be greater than all.*" Pray, sir, attend to the reason for their opinion that the government of this their instrument is more calamitous to the country than the ravages of war.—Because, say they, his oppressions are "*without intermission.*"—The others are temporary; by all which *oppressions* we believe the nabob has great wealth in-store." From this store neither he nor they could derive any advantage whatsoever, upon the invasion of Hyder Ali in the hour of their greatest calamity and dismay.

It is now proper to compare these declarations with the company's conduct. The principal reason which they assigned against the *extirpation* of the polygars was, that the *weavers* were protected in their fortresses. They might have added, that the company itself, which stung them to death, had been warmed in the bosom of these unfortunate princes: for, on the taking of Madras by the French, it was in their hospitable pollams, that most of the inhabitants found refuge and protection. But, notwithstanding all these orders, reasons, and declarations, they at length gave an indirect sanction, and permitted the use of a very direct and irresistible force, to measures which they had, over and over again, declared to be false policy; cruel, inhuman, and oppressive. Having, however, forgot all attention to the princes and the people, they remembered that they had some sort of interest in the trade of the country; and it is matter of curiosity to observe the protection which they afforded to this their natural object.

Full of anxious cares on this head, they direct, "that in reducing the polygars they (their servants) were to be *cautious*, not to deprive the *weavers and manufacturers* of the protection they often met with in the strong holds of the polygar countries;" and they write to their instrument, the nabob of Arcot, concerning these poor people in a most pathetick strain. "*We entreat* your excellency (say they) in particular, to make the manufacturers the object of your *tenderest care*; particularly when you *root out* the polygars, you do not deprive the *weavers of the*

*protection they enjoyed under them."* When they root out the protectors in favour of the oppressor, they show themselves religiously cautious of the rights of the protected. When they extirpate the shepherd and the shepherd's dogs, they piously recommend the helpless flock to the mercy, and even to the *tenderest care*, of the wolf. This is the uniform strain of their policy, strictly forbidding, and at the same time strenuously encouraging and enforcing, every measure that can ruin and desolate the country committed to their charge. After giving the company's idea of the government of this their instrument, it may appear singular, but it is perfectly consistent with their system, that, besides wasting for him, at two different times, the most exquisite spot upon the earth, Tanjour, and all the adjacent countries, they have even voluntarily, put their own territory, that is, a large and fine country adjacent to Madras, called their jaghire, wholly out of their protection; and have continued to farm their subjects, and their duties towards these subjects, to that very nabob, whom they themselves constantly represent as a habitual oppressor, and a relentless tyrant. This they have done without any pretence of ignorance of the objects of oppression for which this prince has thought fit to become their renter; for he has again and again told them, that it is for the sole purpose of exercising authority he holds the jaghire lands; and he affirms (and I believe with truth) that he pays more for that territory than the revenues yield. This deficiency he must make up from his other territories; and thus, in order to furnish the means of oppressing one part of the Carnatick, he is led to oppress all the rest.

The house perceives that the livery of the company's government is uniform. I have described the condition of the countries indirectly, but most substantially, under the company's authority. And now I ask, whether, with this map of misgovernment before me, I can suppose myself bound by my vote to continue, upon any principles of pretended publick

faith, the management of these countries in those hands? If I kept such a faith (which in reality is no better than a *fides latronum*) with what is called the company, I must break the faith, the covenant, the solemn, original, indispensable oath, in which I am bound, by the eternal frame and constitution of things, to the whole human race.

As I have dwelt so long on these, who are indirectly under the company's administration, I will endeavour to be a little shorter upon the countries immediately under this charter government.—These are the Bengal provinces. The condition of these provinces is pretty fully detailed in the sixth and ninth reports, and in their appendixes. I will select only such principles and instances as are broad and general. To your own thoughts I shall leave it, to furnish the detail of oppressions involved in them. I shall state to you, as shortly as I am able, the conduct of the company;—1st, towards the landed interests;—next, the commercial interests;—3dly, the native government;—and lastly, to their own government.

Bengal, and the provinces that are united to it, are larger than the kingdom of France; and once contained, as France does contain, a great and independent landed interest, composed of princes, of great lords, of a numerous nobility and gentry, of freeholders, of lower tenants, of religious communities, and publick foundations. So early as 1769, the company's servants perceived the decay into which these provinces had fallen under English administration, and they made a strong representation upon this decay, and what they apprehended to be the causes of it. Soon after this representation, Mr. Hastings became president of Bengal. Instead of administering a remedy to this melancholy disorder, upon the heels of a dreadful famine, in the year 1772, the succour which the new president and the council lent to this afflicted nation was—shall I be believed in relating it?—the landed interest of a whole kingdom, of a kingdom to be compared to France, was set up to publick auction! They set up (Mr. Hastings set up) the

whole nobility, gentry, and freeholders, to the highest bidder. No preference was given to the ancient proprietors. They must bid against every usurer, every temporary adventurer, every jobber and schemer, every servant of every European, or they were obliged to content themselves, in lieu of their extensive domains, with their house, and such a pension as the state auctioneers thought fit to assign. In this general calamity, several of the first nobility thought (and in all appearance justly) that they had better submit to the necessity of this pension, than continue, under the name of zemindars, the objects and instruments of a system, by which they ruined their tenants, and were ruined themselves. Another reform has since come upon the back of the first; and a pension having been assigned to these unhappy persons, in lieu of their hereditary lands, a new scheme of economy has taken place, and deprived them of that pension.

The menial servants of Englishmen, persons (to use the emphatical phrase of a ruined and patient eastern chief) "*whose fathers they would not have set with the dogs of their flock,*" entered into their patrimonial lands. Mr. Hastings's banian was, after this auction, found possessed of territories yielding a rent of one hundred and forty thousand pounds a year.

Such a universal proscription, upon any pretence, has few examples. Such a proscription, without even a pretence of delinquency, has none. It stands by itself. It stands as a monument to astonish the imagination, to confound the reason of mankind. I confess to you, when I first came to know this business in its true nature and extent, my surprise did a little suspend my indignation. I was in a manner stupified by the desperate boldness of a few obscure young men, who having obtained, by ways which they could not comprehend, a power of which they saw neither the purposes nor the limits, tossed about, subverted, and tore to pieces, as if it were in the gambols of a boyish unluckiness and malice, the most established rights, and the most ancient and

most reverend institutions, of ages and nations. Sir, I will not now trouble you with any detail with regard to what they have since done with these same lands and land-holders; only to inform you, that nothing has been suffered to settle for two seasons together upon any basis; and that the levity and inconstancy of these mock legislators were not the least afflicting parts of the oppressions suffered under their usurpation; nor will any thing give stability to the property of the natives, but an administration in England at once protecting and stable. The country sustains, almost every year, the miseries of a revolution. At present, all is uncertainty, misery, and confusion. There is to be found through these vast regions no longer one landed man, who is a resource for voluntary aid, or an object for particular rapine. Some of them were, not long since, great princes; they possessed treasures, they levied armies. There was a zemindar in Bengal (I forget his name) that, on the threat of an invasion, supplied the soubah of these provinces with the loan of a million sterling. The family at this day wants credit for a breakfast at the bazar.

I shall now say a word or two on the company's care of the commercial interest of those kingdoms. As it appears in the reports, that persons in the highest stations in Bengal have adopted, as a fixed plan of policy, the destruction of all intermediate dealers between the company and the manufacturer, native merchants have disappeared of course. The spoil of the revenues is the sole capital which purchases the produce and manufactures; and through three or four foreign companies transmits the official gains of individuals to Europe. No other commerce has an existence in Bengal. The transport of its plunder is the only traffick of the country. I wish to refer you to the appendix to the ninth report for a full account of the manner in which the company have protected the commercial interests of their dominions in the east.



As to the native government and the administration of justice, it subsisted in a poor tottering manner for some years. In the year 1781, a total revolution took place in that establishment. In one of the usual freaks of legislation of the council of Bengal, the whole criminal jurisdiction of these courts, called the Phoudary judicature, exercised till then by the principal Mussulmen, was, in one day, without notice, without consultation with the magistrates or the people there, and without communication with the directors or ministers here, totally subverted. A new institution took place, by which this jurisdiction was divided between certain English servants of the company and the Gentop zemindars of the country, the latter of whom never petitioned for it, nor, for aught that appears, ever desired this boon. But its natural use was made of it; it was made a pretence for new extortions of money.

The natives had, however, one consolation in the ruin of their judicature; they soon saw that it fared no better with the English government itself. That too, after destroying every other, came to its period. This revolution may well be rated for a most daring act, even among the extraordinary things that have been doing in Bengal since our unhappy acquisition of the means of so much mischief.

An establishment of English government for civil justice, and for the collection of revenue, was planned and executed by the president and council of Bengal, subject to the pleasure of the directors, in the year 1772. According to this plan, the country was divided into six districts, or provinces. In each of these was established a provincial council, which administered the revenue; and of that council one member by monthly rotation, presided in the courts of civil resort; with an appeal to the council of the province, and thence to Calcutta. In this system (whether, in other respects, good or evil) there were some capital advantages. There was in the very number of persons in each provincial council, authority, communication, mutual check, and control.

They were obliged, on their minutes of consultation, to enter their reasons and dissents; so that a man of diligence, of research, and tolerable sagacity, sitting in London, might, from these materials, be enabled to form some judgment of the spirit of what was going on on the furthest banks of the Ganges and Burrampooter.

The court of directors so far ratified this establishment (which was consonant enough to their general plan of government) that they gave precise orders, that no alteration should be made in it, without their consent. So far from being apprised of any design against this constitution, they had reason to conceive that on trial it had been more and more approved by their council general, at least by the governour general, who had planned it. At the time of the revolution the council general was nominally in two persons, virtually in one. At that time measures of an arduous and critical nature ought to have been forborn, even if, to the fullest council, this specifick measure had not been prohibited by the superiour authority. It was in this very situation, that one man had the hardiness to conceive, and the temerity to execute, a total revolution in the form and the persons composing the government of a great kingdom. Without any previous step, at one stroke, the whole constitution of Bengal, civil and criminal, was swept away. The counsellors were recalled from their provinces. Upwards of fifty of the principal officers of government were turned out of employ, and rendered dependent on Mr. Hastings for their immediate subsistence, and for all hope of future provision. The chief of each council, and one European collector of revenue, was left in each province.

But here, sir, you may imagine a new government, of some permanent description, was established in the place of that which had been thus suddenly overturned. No such thing. Lest these chiefs without councils should be conceived to form the ground plan of some future government, it was publicly declared, that their continuance was only temporary

and permissive. The whole subordinate British administration of revenue was then vested in a committee in Calcutta, all creatures of the governor general; and the provincial management, under the permissive chief, was delivered over to native officers.

But, that the revolution, and the purposes of the revolution might be complete, to this committee were delegated, not only the functions of all the inferior, but, what will surprise the house, those of the supreme administration of revenue also. Hitherto the governor general and council had, in their revenue department, administered the finances of those kingdoms. By the new scheme they are delegated to this committee, who are only to report their proceedings for approbation.

The key to the whole transaction is given in one of the instructions to the committee: "That it is not necessary that they should enter dissents." By this means the ancient plan of the company's administration was destroyed; but the plan of concealment was perfected. To that moment the accounts of the revenues were tolerably clear; or at least means were furnished for inquiries, by which they might be rendered satisfactory. In the obscure and silent gulph of this committee every thing is now buried. The thickest shades of night surround all their transactions. No effectual means of detecting fraud, mismanagement or misrepresentation, exist. The directors, who have dared to talk with such confidence on their revenues, know nothing about them. What used to fill volumes is now comprised under a few dry heads on a sheet of paper. The natives, a people habitually made to concealment, are the chief managers of the revenue throughout the provinces. I mean by natives, such wretches as your rulers select out of them as most fitted for their purposes. As a proper key-stone to bind the arch, a native, one Gunga Govind Sing, a man turned out of his employment by sir John Clavering, for malversation in office, is made the corresponding secretary; and, indeed, the great moving principle of their new board.

As the whole revenue and civil administration was thus subverted, and a clandestine government substituted in the place of it, the judicial institution underwent a like revolution. In 1772 there had been six courts formed out of the six provincial councils. Eighteen new ones are appointed in their place, with each a judge, taken from the *junior* servants of the company. To maintain these eighteen courts, a tax is levied on the sums in litigation, of 2 1-2 *per cent.* on the great, and of 5 *per cent.* on the less. This money is all drawn from the provinces to Calcutta. The chief justice (the same who stays in defiance of a vote of this house, and of his majesty's recall) is appointed at once the treasurer and disposer of these taxes, levied without any sort of authority, from the company, from the crown, or from parliament.

In effect, sir, every legal, regular authority in matters of revenue, of political administration, of criminal law, of civil law, in many of the most essential parts of military discipline, is laid level with the ground; and an oppressive, irregular, capricious, unsteady, rapacious, and peculating despotism, with a direct disavowal of obedience to any authority at home, and without any fixed maxim, principle, or rule of proceeding, to guide them in India, is at present the state of your charter government over great kingdoms.

As the company has made this use of their trust, I should ill discharge mine, if I refused to give my most cheerful vote for the redress of these abuses, by putting the affairs of so large and valuable a part of the interests of this nation, and of mankind, into some steady hands, possessing the confidence, and assured of the support of this house, until they can be restored to regularity, order, and consistency.

I have touched the heads of some of the grievances of the people, and the abuses of government. But I hope and trust, you will give me credit, when I faithfully assure you, that I have not mentioned one fourth part of what has come to my knowledge in your committee; and further, I have full reason to believe,

that not one fourth part of the abuses are come to my knowledge, by that or by any other means. Pray consider what I have said only as an index to direct you in your inquiries.

If this then, sir, has been the use made of the trust of political powers internal and external, given by you in the charter, the next thing to be seen is the conduct of the company with regard to the commercial trust. And here I will make a fair offer :—If it can be proved that they have acted wisely, prudently, and frugally, as merchants, I shall pass by the whole mass of their enormities as statesmen. That they have not done this, their present condition is proof sufficient. Their distresses are said to be owing to their wars. This is not wholly true. But if it were, is not that readiness to engage in wars which distinguishes them, and for which the committee of secrecy has so branded their politicks, founded on the falsest principles of mercantile speculation ?

The principle of buying cheap and selling dear is the first, the great foundation of mercantile dealing. Have they ever attended to this principle ? Nay, for years have they not actually authorized in their servants a total indifference as to the prices they were to pay ?

A great deal of strictness in driving bargains for whatever we contract, is another of the principles of mercantile policy. Try the company by that test ! Look at the contracts that are made for them. Is the company so much as a good commissary to their own armies ? I engage to select for you, out of the innumerable mass of their dealings, all conducted very nearly alike, one contract only, the excessive profits on which, during a short term, would pay the whole of their year's dividend. I shall undertake to show, that upon two others, the inordinate profits given, with the losses incurred in order to secure those profits, would pay a year's dividend more.

It is a third property of trading men to see that their clerks do not divert the dealings of the master to their own benefit. It was the other day only, when

their governour and council taxed the company's investment with a sum of fifty thousand pounds, as an inducement to persuade only seven members of their board of trade to give their *honour* that they would abstain from such profits upon that investment as they must have violated their *oaths* if they had made at all.

It is a fourth quality of a merchant to be exact in his accounts. What will be thought, when you have fully before you the mode of accounting made use of in the treasury of Bengal?—I hope you will have it soon. With regard to one of their agencies, when it came to the material part, the prime cost of the goods on which a commission of fifteen *per cent.* was allowed, to the astonishment of the factory to whom the commodities were sent, the accountant general reports that he did not think himself authorized to call for *vouchers* relative to this and other particulars—because the agent was upon his *honour* with regard to them. A new principle of account upon honour seems to be regularly established in their dealings and their treasury, which in reality amounts to an entire annihilation of the principle of all accounts.

It is a fifth property of a merchant, who does not meditate a fraudulent bankruptcy. to calculate his probable profits upon the money he takes up to vest in business. Did the company, when they bought goods on bonds bearing 8 *per cent.* interest, at ten and even twenty *per cent.* discount, even ask themselves a question concerning the possibility of advantage from dealing on these terms?

The last quality of a merchant I shall advert to is the taking care to be properly prepared, in cash or goods, in the ordinary course of sale, for the bills which are drawn on them. Now I ask, whether they have ever calculated the clear produce of any given sales, to make them tally with the four million of bills which are come and coming upon them, so as at the proper periods to enable the one to liquidate the other? No, they have not. They are now obliged to borrow money of their own servants to purchase their

investment. The servants stipulate five *per cent.* on the capital they advance, if their bills should not be paid at the time when they become due; and the value of the rupee on which they charge this interest is taken at two shillings and a penny. Has the company ever troubled themselves to inquire whether their sales can bear the payment of that interest, and at that rate of exchange? Have they once considered the dilemma in which they are placed—the ruin of their credit in the East Indies, if they refuse the bills—the ruin of their credit and existence in England, if they accept them? Indeed no trace of equitable government is found in their politicks; not one trace of commercial principle in their mercantile dealing; and hence is the deepest and maturest wisdom of parliament demanded, and the best resources of this kingdom must be strained to restore them; that is, to restore the countries destroyed by the misconduct of the company, and to restore the company itself, ruined by the consequences of their plans for destroying what they were bound to preserve.

I required, if you remember, at my outset, a proof that these abuses were habitual. But surely this it is not necessary for me to consider as a separate head; because I trust I have made it evident beyond a doubt, in considering the abuses themselves, that they are regular, permanent, and systematical.

I am now come to my last condition, without which, for one, I will never readily lend my hand to the destruction of any established government; which is:—That in its present state, the government of the East India company is absolutely incorrigible.

Of this great truth I think there can be little doubt, after all that has appeared in this house. It is so very clear, that I must consider the leaving any power in their hands, and the determined resolution to continue and countenance every mode and every degree of speculation, oppression and tyranny, to be one and the same thing. I look upon that body incorrigible, from the fullest consideration both of

their uniform conduct, and their present real and virtual constitution.

If they had not constantly been apprized of all the enormities committed in India under their authority; if this state of things had been as much a discovery to them as it was to many of us; we might flatter ourselves that the detection of the abuses would lead to their reformation. I will go further: if the court of directors had not uniformly condemned every act which this house or any of its committees had condemned; if the language in which they expressed their disapprobation against enormities and their authors had not been much more vehement and indignant than any ever used in this house, I should entertain some hopes. If they had not, on the other hand, as uniformly commended all their servants who had done their duty and obeyed their orders, as they had heavily censured those who rebelled; I might say, these people have been in an error; and when they are sensible of it they will mend. But when I reflect on the uniformity of their support to the objects of their uniform censure; and the state of insignificance and disgrace to which all of those have been reduced whom they approved; and that even utter ruin and premature death have been among the fruits of their favour; I must be convinced, that in this case, as in all others, hypocrisy is the only vice that never can be cured.

Attend, I pray you, to the situation and prosperity of Benfield, Hastings, and others of that sort. The last of these has been treated by the company with an asperity of reprehension that has no parallel. They lament, "that the power of disposing of their property for perpetuity, should fall into such hands." Yet for fourteen years, with little interruption, he has governed all their affairs, of every description, with an absolute sway. He has had himself the means of heaping up immense wealth; and during that whole period, the fortunes of hundreds have depended on his smiles and frowns. He himself tells you he is incumbered with two hundred and fifty young



gentlemen, some of them of the best families in England, all of whom aim at returning with vast fortunes to Europe in the prime of life. He has then two hundred and fifty of your children as his hostages for your good behaviour; and loaded for years, as he has been, with the execrations of the natives, with the censures of the court of directors, and struck and blasted with the resolutions of this house, he still maintains the most despotick power ever known in India: he domineers with an overbearing sway in the assemblies of his pretended masters; and it is thought in a degree rash to venture to name his offences in this house, even as grounds of a legislative remedy.

On the other hand, consider the fate of those who have met with the applauses of the directors. Colonel Monson, one of the best of men, had his days shortened by the applauses, destitute of the support, of the company. General Clavering, whose panegyric was made in every despatch from England, whose hearse was bedewed with the tears, and hung round with the eulogies of the court of directors, burst an honest and indignant heart at the treachery of those who ruined him by their praises. Uncommon patience and temper, supported Mr. Francis awhile longer under the baneful influence of the commendation of the court of directors. His health however gave way at length; and, in utter despair he returned to Europe. At his return the doors of the India house were shut to this man, who had been the object of their constant admiration. He has indeed escaped with life; but he has forfeited all expectation of credit, consequence, party, and following. He may well say, *Me nemo ministro fur erit, atque ideo nulli comes exeo*. This man, whose deep reach of thought, whose large legislative conceptions, and whose grand plans of policy make the most shining part of our reports, from whence we have all learned our lessons, if we have learned any good ones; this man, from whose materials those gentlemen who have least acknowledged it have yet spoken as from a brief; this man, driven from his employment, discountenanced by the direc-

tors, has had no other reward, and no other distinction, but that inward "sunshine of the soul" which a good conscience can always bestow upon itself. He has not yet had so much as a good word, but from a person too insignificant to make any other return for the means with which he has been furnished for performing his share of a duty which is equally urgent on us all.

Add to this, that from the highest in place to the lowest, every British subject, who, in obedience to the company's orders, has been active in the discovery of peculations has been ruined. They have been driven from India. When they made their appeal at home they were not heard; when they attempted to return they were stopped. No artifice of fraud, no violence of power, has been omitted to destroy them in character as well as in fortune.

Worse, far worse, has been the fate of the poor creatures, the natives of India, whom the hypocrisy of the company has betrayed into complaint of oppression, and discovery of peculation. The first women in Bengal, the ranny of Rajeshahi, the ranny of Burdwan, the ranny of Amboa, by their weak and thoughtless trust in the company's honour and protection, are utterly ruined: the first of these women, a person of princely rank, and once of correspondent fortune, who paid above two hundred thousand a year quit-rent to the state, is, according to very credible information, so completely beggared as to stand in need of the relief of alms. Mahomed Reza Khan, the second Mussulman in Bengal, for having been distinguished by the ill-omened honour of the countenance and protection of the court of directors, was, without the pretence of any inquiry whatsoever into his conduct, stripped of all his employments, and reduced to the lowest condition. His ancient rival for power, the rajah Nundcomar, was by an insult on every thing which India holds respectable and sacred, hanged in the face of all his nation, by the judges you sent to protect that people; hanged for a pretended crime, upon an *ex post facto* British act of

parliament, in the midst of his evidence against Mr. Hastings. The accuser they saw hanged. The culprit, without acquittal or inquiry, triumphs on the ground of that murder : a murder not of Nundomar only, but of all living testimony, and even of evidence yet unborn. From that time not a complaint has been heard from the natives against their governours. All the grievances of India have found a complete remedy.

Men will not look to acts of parliament, to regulations, to declarations, to votes, and resolutions. No, they are not such fools. They will ask, what is the road to power, credit, wealth, and honours? They will ask, what conduct ends in neglect, disgrace, poverty, exile, prison and gibbet? These will teach them the course which they are to follow. It is your distribution of these that will give the character and tone to your government. All the rest is miserable grimace.

When I accuse the court of directors of this habitual treachery, in the use of reward and punishment, I do not mean to include all the individuals in that court. There have been, sir, very frequently, men of the greatest integrity and virtue amongst them; and the contrariety in the declarations and conduct of that court has arisen, I take it, from this :—That the honest directors have, by the force of matter of fact on the records, carried the reprobation of the evil measures of the servants in India. This could not be prevented, whilst these records stared them in the face; nor were the delinquents, either here or there, very solicitous about their reputation, as long as they were able to secure their power. The agreement of their partisans to censure them, blunted for awhile the edge of a severe proceeding. It obtained for them a character of impartiality, which enabled them to recommend, with some sort of grace, what will always carry a plausible appearance, those treacherous expedients, called moderate measures. Whilst these were under discussion, new matter of complaint came over, which seemed to antiquate the first. The same

circle was here trod round once more ; and thus, through years, they proceeded in a compromise of censure for punishment ; until by shame and despair, one after another, almost every man, who preferred his duty to the company to the interest of their servants has been driven from that court.

This, sir, has been their conduct ; and it has been the result of the alteration which was insensibly made in their constitution. The change was made insensibly ; but it is now strong and adult, and as publick and declared, as it is fixed beyond all power of reformation. So that there is none who hears me, that is not as certain as I am, that the company, in the sense in which it was formerly understood, has no existence. The question is not, what injury you may do to the proprietors of India stock ; for there are no such men to be injured. If the active ruling part of the company who form the general court, who fill the offices, and direct the measures (the rest tell for nothing) were persons who held their stock as a means of their subsistence, who in the part they took were only concerned in the government of India, for the rise or fall of their dividend, it would be indeed a defective plan of policy. The interest of the people who are governed by them would not be their primary object ; perhaps a very small part of their consideration at all. But then they might well be depended on, and perhaps more than persons in other respects preferable, for preventing the peculations of their servants to their own prejudice. Such a body would not easily have left their trade as a spoil to the avarice of those who received their wages. But now things are totally reversed. The stock is of no value, whether it be the qualification of a director or proprietor ; and it is impossible that it should. A director's qualification may be worth about two thousand five hundred pounds—and the interest, at eight *per cent.* is about one hundred and sixty pounds a year. Of what value is that, whether it rise to ten, or fall to six, or to nothing, to him whose son, before he is in Bengal two months, and before he descends the steps of the

council chamber, sells the grant of a single contract for forty thousand pounds? Accordingly the stock is bought up in qualifications. The vote is not to protect the stock, but the stock is bought to acquire the vote; and the end of the vote is to cover and support against justice, some man of power who has made an obnoxious fortune in India; or to maintain in power those who are actually employing it in the acquisition of such a fortune; and to avail themselves in return of his patronage, that he may shower the spoils of the east, "barbarick pearl and gold," on them, their families, and dependants. So that all the relations of the company are not only changed, but inverted. The servants in India are not appointed by the directors, but the directors are chosen by them. The trade is carried on with their capitals. To them the revenues of the country are mortgaged. The seat of the supreme power is in Calcutta. The house in Leadenhall street is nothing more than a change for their agents, factors, and deputies to meet in, to take care of their affairs, and support their interests; and this so avowedly, that we see the known agents of the delinquent servants marshalling and disciplining their forces, and the prime spokesmen in all their assemblies.

Every thing has followed in this order, and according to the natural train of events. I will close what I have to say on the incorrigible condition of the company, by stating to you a few facts that will leave no doubt of the obstinacy of that corporation, and of their strength too, in resisting the reformation of their servants. By these facts you will be enabled to discover the sole grounds upon which they are tenacious of their charter. It is now more than two years that, upon account of the gross abuses and ruinous situation of the company's affairs (which occasioned the cry of the whole world long before it was taken up here) that we instituted two committees to inquire into the mismanagements by which the company's affairs had been brought to the brink of ruin. These inquiries had been pursued with unremitting

diligence ; and a great body of facts was collected and printed for general information. In the result of those inquiries, although the committees consisted of very different descriptions, they were unanimous. They joined in censuring the conduct of the Indian administration, and enforcing the responsibility upon two men, whom this house, in consequence of these reports, declared it to be the duty of the directors to remove from their stations, and recall to Great Britain, "*because they had acted in a manner repugnant to the honour and policy of this nation, and thereby brought great calamities on India, and enormous expenses on the East India company.*"

Here was no attempt on the charter. Here was no question of their privileges. To vindicate their own honour, to support their own interests, to enforce obedience to their own orders ; these were the sole object of the monitory resolution of this house. But as soon as the general court could assemble, they assembled to demonstrate who they really were. Regardless of the proceedings of this house, they ordered the directors not to carry into effect any resolution they might come to for the removal of Mr. Hastings and Mr. Hornby. The directors, still retaining some shadow of respect to this house, instituted an inquiry themselves, which continued from June to October ; and after an attentive perusal and full consideration of papers, resolved to take steps for removing the persons who had been the objects of our resolution ; but not without a violent struggle against evidence. Seven directors went so far as to enter a protest against the vote of their court. Upon this the general court takes the alarm ; it reassembles ; it orders the directors to rescind their resolution, that is, not to recall Mr. Hastings and Mr. Hornby, and to despise the resolution of the house of commons. Without so much as the pretence of looking into a single paper, without the formality of instituting any committee of inquiry, they superseded all the labours of their own directors, and of this house.

It will naturally occur to ask, how it was possible that they should not attempt some sort of examination into facts, as a colour for their resistance to a public authority, proceeding so very deliberately and exerted, apparently at least, in favour of their own? The answer, and the only answer which can be given, is, that they were afraid that their true relation should be mistaken. They were afraid that their patrons and masters in India should attribute their support of them to an opinion of their cause, and not to an attachment to their power. They were afraid it should be suspected, that they did not mean blindly to support them in the use they made of that power. They determined to show that they at least were set against reformation; that they were firmly resolved to bring the territories, the trade, and the stock of the company to ruin, rather than be wanting in fidelity to their nominal servants and real masters, in the ways they took to their private fortunes.

Even since the beginning of this session, the same act of audacity was repeated, with the same circumstances of contempt of all the decorum of inquiry on their part, and of all the proceedings of this house. They again made it a request to their favourite, and your culprit, to keep his post; and thanked and applauded him, without calling for a paper which could afford light into the merit or demerit of the transaction, and without giving themselves a moment's time to consider, or even to understand the articles of the Maratta peace. The fact is, that for a long time there was a struggle, a faint one indeed, between the company and their servants. But it is a struggle no longer. For some time the superiority has been decided. The interests abroad are become the settled preponderating weight both in the court of proprietors, and the court of directors. Even the attempt you have made to inquire into their practices and to reform abuses, has raised and piqued them to a far more regular and steady support. The company has made a common cause, and identified themselves, with the destroyers of India. They have taken on themselves

all that mass of enormity ; they are supporting what you have reprobated ; those you condemn they applaud ; those you order home to answer for their conduct, they request to stay, and thereby encourage to proceed in their practices. Thus the servants of the East India company triumph, and the representatives of the people of Great Britain are defeated.

I therefore conclude, what you all conclude, that this body, being totally perverted from the purposes of its institution, is utterly incorrigible ; and because they are incorrigible, both in conduct and constitution, power ought to be taken out of their hands ; just on the same principles on which have been made all the just changes and revolutions of government that have taken place since the beginning of the world.

I will now say a few words to the general principle of the plan which is set up against that of my right honourable friend. It is to re-commit the government of India to the court of directors. Those who would commit the reformation of India to the destroyers of it, are the enemies to that reformation. They would make a distinction between directors and proprietors, which, in the present state of things, does not, cannot exist. But a right honourable gentleman says, he would keep the present government of India in the court of directors ; and would, to curb them, provide salutary regulations :—wonderful ! That is, he would appoint the old offenders to correct the old offences ; and he would render the vicious and the foolish wise and virtuous, by salutary regulations. He would appoint the wolf as guardian of the sheep ; but he has invented a curious muzzle, by which this protecting wolf shall not be able to open his jaws above an inch or two at the utmost. Thus his work is finished. But I tell the right honourable gentleman, that controlled depravity is not innocence ; and that it is not the labour of delinquency in chains, that will correct abuses. Will these gentlemen of the direction animadvert on the partners of their own guilt ? Never did a serious plan of amending of any



old tyrannical establishment propose the authors and abettors of the abuses as the reformers of them. If the undone people of India see their old oppressors in confirmed power, even by the reformation, they will expect nothing but what they will certainly feel a continuance, or rather an aggravation, of all their former sufferings. They look to the seat of power, and to the persons who fill it; and they despise those gentlemen's regulations as much as the gentlemen do who talk of them.

But there is a cure for every thing. Take away, say they, the court of proprietors, and the court of directors will do their duty. Yes; as they have done it hitherto. That the evils in India have solely arisen from the court of proprietors is grossly false. In many of them, the directors were heartily concurring; in most of them they were encouraging, and sometimes commanding; in all, they were conniving.

But who are to choose this well regulated and reforming court of directors?—Why, the very proprietors who are excluded from all management, for the abuse of their power. They will choose, undoubtedly, out of themselves, men like themselves; and those who are most forward in resisting your authority, those who are most engaged in faction or interest with the delinquents abroad, will be the objects of their selection. But gentlemen say, that when this choice is made, the proprietors are not to interfere in the measures of the directors, whilst those directors are busy in the control of their common patrons and masters in India. No, indeed, I believe they will not desire to interfere. They will choose those whom they know may be trusted, safely trusted, to act in strict conformity to their common principles, manners, measures, interests, and connexions. They will want neither monitor nor control. It is not easy to choose men to act in conformity to a publick interest against their private: but a sure dependance may be had on those who are chosen to forward their private interest, at the expense of the publick. But,

If the directors should slip, and deviate into rectitude, the punishment is in the hands of the general court, and it will surely be remembered to them at their next election.

If the government of India wants no reformation; but gentlemen are amusing themselves with a theory, conceiving a more democrattick or aristocrattick mode of government for these dependencies, or if they are in a dispute only about patronage; the dispute is with me of so little concern, that I should not take the pains to utter an affirmative or negative to any proposition in it. If it be only for a theoretical amusement that they are to propose a bill; the thing is at best frivolous and unnecessary. But if the company's government is not only full of abuse, but is one of the most corrupt and destructive tyrannies, that probably ever existed in the world (as I am sure it is) what a cruel mockery would it be in me, and in those who think like me, to propose this kind of remedy for this kind of evil!

I now come to the third objection: That this bill will increase the influence of the crown. An honourable gentleman has demanded of me, whether I was in earnest when I proposed to this house a plan for the reduction of that influence. Indeed, sir, I was much, very much, in earnest. My heart was deeply concerned in it; and I hope the publick has not lost the effect of it. How far my judgment was right, for what concerned personal favour and consequence to myself, I shall not presume to determine; nor is its effect upon me of any moment. But as to this bill, whether it increases the influence of the crown, or not, is a question I should be ashamed to ask. If I am not able to correct a system of oppression and tyranny, that goes to the utter ruin of thirty millions of my fellow creatures and fellow subjects, but by some increase to the influence of the crown, I am ready here to declare, that I, who have been active to reduce it, shall be at least as active and strenuous to restore it again. I am no lover of names; I contend for the

substance of good and protecting government, let it come from what quarter it will.

But I am not obliged to have recourse to this expedient. Much, very much the contrary. I am sure that the influence of the crown will by no means aid a reformation of this kind; which can neither be originated nor supported, but by the uncorrupt public virtue of the representatives of the people of England. Let it once get into the ordinary course of administration, and to me all hopes of reformation are gone. I am far from knowing or believing, that this bill will increase the influence of the crown. We all know, that the crown has ever had some influence in the court of directors; and that it has been extremely increased by the acts of 1773 and 1780. The gentlemen who, as part of their reformation, propose "a more active control on the part of the crown," which is to put the directors under a secretary of state, specially named for that purpose, must know, that their project will increase it further. But that old influence has had, and the new will have, incurable inconveniencies, which cannot happen under the parliamentary establishment proposed in this bill. An honourable gentleman,\* not now in his place, but who is well acquainted with the India company, and by no means a friend to this bill, has told you, that a ministerial influence has always been predominant in that body; and that to make the directors pliant to their purposes, ministers generally caused persons meanly qualified to be chosen directors. According to his idea, to secure subserviency, they submitted the company's affairs to the direction of incapacity. This was to ruin the company in order to govern it. This was certainly influence in the very worst form in which it could appear. At best it was clandestine and irresponsible. Whether this was done so much upon system as that gentleman supposes, I greatly doubt. But such in effect the operation of government on that court unquestionably was; and such,

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under a similar constitution, it will be for ever. Ministers must be wholly removed from the management of the affairs of India, or they will have an influence in its patronage. The thing is inevitable. Their scheme of a new secretary of state, "with a more vigorous control," is not much better than a repetition of the measure which we know by experience will not do. Since the year 1773 and the year 1780, the company has been under the control of the secretary of state's office, and we had then three secretaries of state. If more than this is done, then they annihilate the direction which they pretend to support; and they augment the influence of the crown, of whose growth they affect so great a horror. But in truth this scheme of reconciling a direction really and truly deliberative, with an office really and substantially controlling, is a sort of machinery that can be kept in order but a very short time. Either the directors will dwindle into clerks, or the secretary of state, as hitherto has been the course, will leave every thing to them, often through design, often through neglect. If both should affect activity, collision, procrastination, delay, and in the end, utter confusion must ensue.

But, sir, there is one kind of influence far greater than that of the nomination to office. This gentlemen in opposition have totally overlooked, although it now exists in its full vigour; and it will do so, upon their scheme, in at least as much force as it does now. That influence this bill cuts up by the roots; I mean the *influence of protection*. I shall explain myself:—The office given to a young man going to India is of trifling consequence. But he that goes out an insignificant boy, in a few years returns a great nabob. Mr. Hastings says he has two hundred and fifty of that kind of raw materials, who expect to be speedily manufactured into the merchantable quality I mention. One of these gentlemen, suppose, returns hither, loaded with odium and with riches. When he comes to England, he comes as to a prison, or as to a sanctuary; and either is ready

for him, according to his demeanour. What is the influence in the grant of any place in India, to that which is acquired by the protection or compromise with such guilt, and with the command of such riches, under the dominion of the hopes and fears which power is able to hold out to every man in that condition? That man's whole fortune, half a million perhaps, becomes an instrument of influence, without a shilling of charge to the civil list; and the influx of fortunes which stand in need of this protection is continual. It works both ways; it influences the delinquent, and it may corrupt the minister. Compare the influence acquired by appointing for instance even a governor general, and that obtained by protecting him. I shall push this no further. But I wish gentlemen to roll it a little in their own minds.

The bill before you cuts off this source of influence. Its design and main scope is to regulate the administration of India upon the principles of a court of judicature; and to exclude, as far as human prudence can exclude, all possibility of a corrupt partiality, in appointing to office, or supporting in office, or covering from inquiry and punishment, any person who has abused or shall abuse his authority. At the board, as appointed and regulated by this bill, reward and punishment cannot be shifted and reversed by a whisper. That commission becomes fatal to cabal, to intrigue, and to secret representation, those instruments of the ruin of India. He that cuts off the means of premature fortune, and the power of protecting it when acquired, strikes a deadly blow at the great fund, the bank, the capital stock of Indian influence, which cannot be vested any where, or in any hands, without most dangerous consequences to the publick.

The third and contradictory objection is, That this bill does not increase the influence of the crown. On the contrary, That the just power of the crown will be lessened, and transferred to the use of a party, by giving the patronage of India to a commission nominated by parliament, and independent of the crown.

The contradiction is glaring, and it has been too well exposed to make it necessary for me to insist upon it. But passing the contradiction, and taking it without any relation, of all objections that is the most extraordinary. Do not gentlemen know, that the crown has not at present the grant of a single office under the company, civil or military, at home or abroad? So far as the crown is concerned, it is certainly rather a gainer; for the vacant offices in the new commission are to be filled up by the king.

It is argued as a part of the bill, derogatory to the prerogatives of the crown, that the commissioners named in the bill are to continue for a short term of years (too short in my opinion) and because, during that time, they are not at the mercy of every predominant faction of the court. Does not this objection lie against the present directors; none of whom are named by the crown, and a proportion of whom hold for this very term of four years? Did it not lie against the governor general and council named in the act of 1773—who were invested by name, as the present commissioners are to be appointed in the body of the act of parliament, who were to hold their places for a term of years, and were not removable at the discretion of the crown? Did it not lie against the reappointment, in the year 1780, upon the very same terms? Yet at none of these times, whatever other objections the scheme might be liable to, was it supposed to be a derogation to the just prerogative of the crown, that a commission created by act of parliament should have its members named by the authority which called it into existence? This is not the disposal by parliament of any office derived from the authority of the crown, or now disposable by that authority. It is so far from being any thing new, violent, or alarming, that I do not recollect, in any parliamentary commission, down to the commissioners of the land tax, that it has ever been otherwise.

The objection of the tenure for four years is an objection to all places that are not held during pleasure; but in that objection I pronounce the gentlemen, from

my knowledge of their complexion and of their principles, to be perfectly in earnest. The party (say these gentlemen) of the minister who proposes this scheme will be rendered powerful by it; for he will name his party friends to the commission. This objection against party is a party objection; and in this too these gentlemen are perfectly serious. They see that if, by any intrigue, they should succeed to office, they will lose the *clandestine* patronage, the true instrument of clandestine influence, enjoyed in the name of subservient directors, and of wealthy trembling Indian delinquents. But as often as they are beaten off this ground, they return to it again. The minister will name his friends, and persons of his own party.—Who should he name? Should he name his adversaries? Should he name those whom he cannot trust? Should he name those to execute his plans, who are the declared enemies to the principles of his reform? His character is here at stake. If he proposes for his own ends (but he never will propose) such names as, from their want of rank, fortune, character, ability, or knowledge, are likely to betray or to fall short of their trust, he is in an independent house of commons; in a house of commons which has, by its own virtue, destroyed the instruments of parliamentary subservience. This house of commons would not endure the sound of such names. He would perish by the means which he is supposed to pursue for the security of his power. The first pledge he must give of his sincerity in this great reform will be in the confidence which ought to be reposed in those names.

For my part, Sir, in this business I put all indirect considerations wholly out of my mind. My sole question, on each clause of the bill, amounts to this: Is the measure proposed required by the necessities of India? I cannot consent totally to lose sight of the real wants of the people who are the objects of it, and to hunt after every matter of party squabble that may be started on the several provisions. On the question of the duration of the commission I am clear and decided.

Can I, can any one who has taken the smallest trouble to be informed concerning the affairs of India, amuse himself with so strange an imagination, as that the habitual despotism and oppression, that the monopolies, the peculations, the universal destruction of all the legal authority of this kingdom, which have been for twenty years maturing to their present enormity, combined with the distance of the scene, the boldness and artifice of delinquents, their combination, their excessive wealth, and the faction they have made in England, can be fully corrected in a shorter term than four years? None has hazarded such an assertion—None, who has a regard for his reputation, will hazard it.

Sir, the gentlemen, whoever they are, who shall be appointed to this commission, have an undertaking of magnitude on their hands, and their stability must not only be, but it must be thought, real;—and who is it will believe, that any thing short of an establishment made, supported, and fixed in its duration, with all the authority of parliament, can be thought secure of a reasonable stability? The plan of my honourable friend is the reverse of that of reforming by the authors of the abuse. The best we could expect from them is, that they should not continue their ancient pernicious activity. To those we could think of nothing but applying *control*; as we are sure, that even a regard to their reputation (if any such thing exists in them) would oblige them to cover, to conceal, to suppress, and consequently to prevent, all cure of the grievances of India. For what can be discovered, which is not to their disgrace? Every attempt to correct an abuse would be a satire on their former administration. Every man they should pretend to call to an account, would be found their instrument or their accomplice. They can never see a beneficial regulation, but with a view to defeat it. The shorter the tenure of such persons, the better would be the chance of some amendment.

But the system of the bill is different. It calls in persons no wise concerned with any act censured by



parliament; persons generated with, and for the reform of which, they are themselves the most essential part. To these the chief regulations in the bill are helps, not fetters; they are authorities to support, not regulations to restrain them. From these we look for much more than innocence. From these we expect zeal, firmness, and unremitted activity. Their duty, their character, binds them to proceedings of vigour; and they ought to have a tenure in their office which precludes all fear, whilst they are acting up to the purposes of their trust; a tenure without which, none will undertake plans that require a series and system of acts. When they know that they cannot be whispered out of their duty, that their public conduct cannot be censured without a public discussion; that the schemes which they have begun will not be committed to those who will have an interest and credit in defeating and disgracing them; then we may entertain hopes. The tenure is for four years, or during their good behaviour. That good behaviour is as long as they are true to the principles of the bill; and the judgment is in either house of parliament. This is the tenure of your judges; and the valuable principle of the bill is, to make a judicial administration for India. It is to give confidence in the execution of a duty, which requires as much perseverance and fortitude as can fall to the lot of any that is born of woman.

As to the gain by party, from the right honourable gentleman's bill, let it be shown, that this supposed party advantage is pernicious to its object, and the objection is of weight; but until this is done, and this has not been attempted, I shall consider the sole objection, from its tendency to promote the interest of a party, as altogether contemptible. The kingdom is divided into parties, and it ever has been so divided, and it ever will be so divided; and if no system for relieving the subjects of this kingdom from oppression, and snatching its affairs from ruin, can be adopted until it is demonstrated that no party can derive an advantage from it, no good can ever be done in this country. If party is to derive an advantage from the

reform of India (which is more than I know, or believe) it ought to be that party which alone, in this kingdom, has its reputation, nay its very being, pledged to the protection and preservation of that part of the empire. Great fear is expressed, that the commissioners named in this bill will show some regard to a minister out of place. To men made like the objectors, this must appear criminal. Let it however be remembered by others, that if the commissioners should be his friends, they cannot be his slaves. But dependants are not in a condition to adhere to friends, nor to principles, nor to any uniform line of conduct. They may begin censors, and be obliged to end accomplices. They may be even put under the direction of those whom they were appointed to punish.

The fourth and last objection is, That the bill will hurt publick credit. I do not know whether this requires an answer. But if it does, look to your foundations. The sinking fund is the pillar of credit in this country; and let it not be forgot, that the distresses, owing to the mismanagement of the East India company, have already taken a million from that fund by the non-payment of duties. The bills drawn upon the company, which are about four millions, cannot be accepted without the consent of the treasury. The treasury, acting under a parliamentary trust and authority, pledges the publick for these millions. If they pledge the publick, the publick must have a security in its hands for the management of this interest, or the national credit is gone. For otherwise it is not only the East India company, which is a great interest, that is undone, but, clinging to the security of all your funds, it drags down the rest, and the whole fabrick perishes in one ruin. If this bill does not provide a direction of integrity and of ability competent to that trust, the objection is fatal. If it does, publick credit must depend on the support of the bill.

It has been said, if you violate this charter, what security has the charter of the bank, in which publick

credit is so deeply concerned, and even the charter of London, in which the rights of so many subjects are involved? I answer, in the like case they have no security at all—No—no security at all. If the bank should, by every species of mismanagement, fall into a state similar to that of the East India company; if it should be oppressed with demands it could not answer, engagements which it could not perform, and with bills for which it could not procure payment; no charter should protect the mismanagement from correction, and such publick grievances from redress. If the city of London had the means and will of destroying an empire, and of cruelly oppressing and tyrannizing over millions of men as good as themselves, the charter of the city of London should prove no sanction to such tyranny and such oppression. Charters are kept, when their purposes are maintained: they are violated, when the privilege is supported against its end and its object.

Now, sir, I have finished all I proposed to say, as my reasons for giving my vote to this bill. If I am wrong, it is not for want of pains to know what is right. This pledge, at least, of my rectitude I have given to my country.

And now, having done my duty to the bill, let me say a word to the author. I should leave him to his own noble sentiments, if the unworthy and illiberal language with which he has been treated, beyond all example of parliamentary liberty, did not make a few words necessary; not so much in justice to him, as to my own feelings. I must say then, that it will be a distinction honourable to the age, that the rescue of the greatest number of the human race that ever were so grievously oppressed, from the greatest tyranny that was ever exercised, has fallen to the lot of abilities and dispositions equal to the task; that it has fallen to one who has the enlargement to comprehend, the spirit to undertake, and the eloquence to support so great a measure of hazardous benevolence. His spirit is not owing to his ignorance of the state of men and things; he well knows what snares are spread

about his path, from personal animosity, from court intrigues, and possibly from popular delusion. But he has put to hazard his ease, his security, his interest, his power, even his darling popularity, for the benefit of a people whom he has never seen. This is the road that all heroes have trod before him. He is traduced and abused for his supposed motives. He will remember that obloquy is a necessary ingredient in the composition of all true glory : he will remember, that it was not only the Roman customs, but it is in the nature and constitution of things, that calumny and abuse are essential parts of triumph. These thoughts will support a mind, which only exists for honour, under the burthen of temporary reproach. He is doing indeed a great good ; such as rarely falls to the lot, and almost as rarely coincides with the desires of any man. Let him use his time. Let him give the whole length of the reins to his benevolence. He is now on a great eminence, where the eyes of mankind are turned to him. He may live long, he may do much. But here is the summit. He never can exceed what he does this day.

He has faults ; but they are faults that, though they may in a small degree tarnish the lustre, and sometimes impede the march of his abilities, have nothing in them to extinguish the fire of great virtues. In those faults there is no mixture of deceit, of hypocrisy, of pride, of ferocity, of complexional despotism, or want of feeling for the distresses of mankind. His are faults which might exist in a descendant of Henry the Fourth of France, as they did exist in that father of his country. Henry the Fourth wished that he might live to see a fowl in the pot of every peasant of his kingdom. That sentiment of homely benevolence was worth all the splendid sayings that are recorded of kings. But he wished perhaps for more than could be obtained, and the goodness of the man exceeded the power of the king. But this gentleman, a subject, may this day say this at least, with truth, that he secures the rice in his pot to every man in India. A poet of antiquity thought it one of the

first distinctions to a prince whom he meant to celebrate, that through a long succession of generations, he had been the progenitor of an able and virtuous citizen, who by force of the arts of peace, had corrected governments of oppression, and suppressed wars of rapine.

*Indole proh quanta juvenis, quantumque daturus  
Ausoniæ populis, ventura in sæcula civem.  
Ille super Gangem, super exauditus et Indos,  
Implebit terras voce ; et furialia bella  
Fulmine compeacet linguae. —*

This was what was said of the predecessour of the only person to whose eloquence it does not wrong that of the mover of this bill to be compared. But the Ganges and the Indus are the patrimony of the fame of my honourable friend, and not of Cicero. I confess, I anticipate with joy the reward of those, whose whole consequence, power, and authority, exist only for the benefit of mankind ; and I carry my mind to all the people, and all the names and descriptions, that, relieved by this bill, will bless the labours of this parliament, and the confidence which the best house of commons has given to him who the best deserves it. The little cavils of party will not be heard, where freedom and happiness will be felt. There is not a tongue, a nation, or religion in India, which will not bless the presiding care and manly beneficence of this house, and of him who proposes to you this great work. Your names will never be separated before the throne of the Divine Goodness, in whatever language, or with whatever rites, pardon is asked for sin, and reward for those who imitate the Godhead in his universal bounty to his creatures. These honours you deserve, and they will surely be paid, when all the jargon of influence, and party, and patronage are swept into oblivion.

I have spoken what I think, and what I feel, of the mover of this bill. An honourable friend of mine, speaking of his merits, was charged with having made a studied panegyrick. I don't know what his was. Mine, I am sure, is a studied pa-

negyrick ; the fruit of much meditation ; the result of the observation of near twenty years. For my own part, I am happy that I have lived to see this day. I feel myself overpaid for the labours of eighteen years, when, at this late period, I am able to take my share, by one humble vote, in destroying a tyranny that exists to the disgrace of this nation, and the destruction of so large a part of the human species.



## MR. FOX'S SPEECH,

ON MONDAY, DECEMBER 1, 1783, UPON A MOTION FOR THE COMMITMENT OF THE BILL "VESTING THE AFFAIRS OF THE EAST-INDIA COMPANY IN THE HANDS OF CERTAIN COMMISSIONERS, FOR THE BENEFIT OF THE PROPRIETORS AND OF THE PUBLICK."

WE here insert the concluding speech of Mr. Fox, on his memorable India bill, which has been extolled as among the noblest efforts of his intellectual powers. Though, certainly, it has very elevated pretensions, we cannot conceive it to be entitled to the extravagant commendation bestowed upon it. When contrasted with the preceding speech of Mr. Burke, on the same occasion, it will be found decidedly inferior. Exhibiting a narrower view of the subject, it has less copiousness of intelligence, less energy of argument, less of the decorations of style, and less of the philosophy of eloquence.

But whatever may be the comparative merits of the speech, it is important to preserve it, as comprising the vindication of two measures which, by impeaching the integrity and consistency of his principles, had the greatest influence on Mr. Fox's political career. We allude to the bill itself, and to his coalition with lord North.

## SPEECH, &c.

SIR,

THE necessity of my saying something upon the present occasion, is so obvious to the house, that no



apology will, I hope, be expected from me in troubling them even at so late an hour.\* I shall not enter much into a detail, or minute defence, of the particulars of the bill before you, because few particular objections have been made. The opposition to it consisting only in general reasonings, of little application some, and others totally distant from the point in question.

The bill has been combated through its past stages upon various principles; but to the present moment the house has not heard it canvassed upon its own intrinsic merits. The debate to night has turned chiefly upon two points, namely, *violation of charter*, and *increase of influence*; and upon both these points I shall say a few words.

The honourable gentleman, who opened the debate,† first demands my attention, not indeed for the wisdom of the observations which fell from him this night, (acute and judicious though he is upon most occasions,) but from the natural weight of all such characters in this country, the aggregate of whom should, I think, always decide upon publick measures. His ingenuity however was never, in my opinion exerted more ineffectually, upon more mistaken principles, and more inconsistent with the common tenour of his conduct, than in this debate.

The honourable gentleman charges me with abandoning that cause, which, he says, in terms of flattery, I had once so successfully asserted. I tell him, in reply, that if he were to search the history of my life, he would find that the period of it, in which I struggled most for the real, substantial cause of liberty, is this very moment that I am addressing you. Freedom, according to my conception of it, consists in the safe and sacred possession of a man's property, governed by laws defined and certain; with many personal privileges, natural, civil, and religious,

\* Two o'clock in the morning.

† Mr. Powys.

which he cannot surrender without ruin to himself; and of which to be deprived by any other power, is despotism. This bill, instead of subverting, is destined to stabilise these principles; instead of narrowing the basis of freedom, it tends to enlarge it; instead of suppressing, its object is to infuse and circulate the spirit of liberty.

What is the most odious species of tyranny? Precisely that which this bill is meant to annihilate. That a handful of men, free themselves, should execute the most base and abominable despotism over millions of their fellow-creatures; that innocence should be the victim of oppression; that industry should toil for rapine; that the harmless labourer should sweat, not for his own benefit, but for the luxury and rapacity of tyrannick depredation. In a word, that thirty millions of men, gifted by Providence with the ordinary endowments of humanity, should groan under a system of despotism, unmatched in all the histories of the world.

What is the end of all government? Certainly the happiness of the governed—Others may hold different opinions; but this is mine, and I proclaim it. What are we to think of a government, whose good fortune is supposed to spring from the calamities of its subjects, whose aggrandisement grows out of the miseries of mankind? This is the kind of government exercised under the East-India company upon the natives of Indostan, and the subversion of that infamous government is the main object of the bill in question. But in the progress of accomplishing this end, it is objected that the charter of the company should not be violated; and upon this point, sir, I shall deliver my opinion without disguise. A charter is a trust to one or more persons for some given benefit. If this trust be abused, if the benefit be not obtained, and that its failure arises from palpable guilt, or, (what in this case is full as bad) from palpable ignorance or mismanagement, will any man gravely say, that that trust should not be resumed and delivered to

other hands, more especially in the case of the East India company, whose manner of executing this trust, whose laxity and langour produced, and tend to produce, consequences diametrically opposite to the ends of confiding that trust, and of the institution for which it was granted? I beg of gentlemen to be aware of the lengths to which their arguments upon the intangibility of this charter may be carried. Every syllable virtually impeaches the establishment by which we sit in this house, in the enjoyment of this freedom, and of every other blessing of our government. These kind of arguments are batteries against the main pillar of the British constitution. Some men are consistent with their own private opinions, and discover the inheritance of family maxims, when they question the principles of the revolution; but I have no scruple in subscribing to the articles of that creed which produced it. Sovereigns are sacred, and reverence is due to every king: yet with all my attachments to the person of a first magistrate, had I lived in the reign of James the Second, I should most certainly have contributed my efforts, and born part in those illustrious struggles which vindicated an empire from hereditary servitude, and recorded this valuable doctrine, *that trust abused was revocable*.

No man will tell me, that a trust to a company of merchants, stands upon the solemn and sanctified ground by which a trust is committed to a monarch; and I am at a loss to reconcile the conduct of men who prove that resumption of violated trust, which rescued and reestablished our unparalleled and admirable constitution with a thousand valuable improvements and advantages at the revolution, and who, at this moment, rise up the champions of the East India company's charter, although the incapacity and incompetence of that company to a due and adequate discharge of the trust deposited in them by that charter, are themes of ridicule and contempt to all the world; and although, in consequence of their mismanagement, connivance, and imbecility, combined with the wickedness of their servants, the very name

of an Englishman is detested, even to a proverb; through all Asia, and the national character is become degraded and dishonoured. To rescue that name from odium, and redeem this character from disgrace, are some of the objects of the present bill; and gentlemen should indeed gravely weigh their opposition to a measure, which with a thousand other points not less valuable, aims at the attainment of these objects.

Those who condemn the present bill, as a violation of the chartered rights of the East India company, condemn, on the same ground, I say again, the revolution, as a violation of the chartered rights of king James II. He, with as much reason, might have claimed the property of dominion; but what was the language of the people? No, you have no property in dominion; dominion was vested in you, as it is in every chief magistrate, for the benefit of the community to be governed; it was a sacred trust delegated by compact; you have abused the trust; you have exercised dominion for the purposes of vexation and tyranny—not of comfort, protection, and good order; and we therefore resume the power which was originally ours: we recur to the first principles of all government, the will of the many; and it is our will that you shall no longer abuse your dominion. The case is the same with the East India company's government over a territory, as it has been said by Mr. Burke, of 280,000 square miles in extent, nearly equal to all Christian Europe, and containing 30,000,000 of the human race. It matters not whether dominion arises from conquest, or from compact. Conquest gives no right to the conqueror to be a tyrant; and it is no violation of right to abolish the authority which is misused.

Having said so much upon the general matter of the bill, I must beg leave to make a few observations upon the remarks of particular gentlemen; and first of the learned gentlemen over against me.\* The

\* Mr. Dundas.

learned gentleman has made a long, and, as he always does, an able speech; yet, translated into plain English, and disrobed of the dexterous ambiguity in which it has been enveloped, to what does it amount? To an establishment of the principles upon which this bill was founded, and an indirect confession of its necessity. He allows the frangibility of charters, when absolute occasion requires it, and admits that the charter of the company should not prevent the adoption of a proper plan for the future government of India, if a proper plan can be achieved upon no other terms. The first of these admissions seems agreeable to the civil maxims of the learned gentleman's life, so far as a maxim can be traced in a political character so various and flexible: and, to deny the second of these concessions was impossible even for the learned gentleman, with a staring reason\* upon your table to confront him if he attempted it. The learned gentleman's bill, and the bill before you, are grounded upon the same bottom, of abuse of trust, mal-administration, debility, and incapacity in the company and their servants; but the difference in the remedy is this; the learned gentleman's bill opens a door to an influence a hundred times more dangerous than any that can be imputed to this bill, and deposits in one man an arbitrary power over millions, not in England, where the evil of this corrupt ministry could not be felt, but in the East Indies, the scene of every mischief, fraud, and violence. The learned gentleman's bill afforded the most extensive latitude for malversation; the bill before you guards against it with all imaginable precaution. Every line in both the bills which I have had the honour to introduce, presumes the possibility of bad administration, for every word breathes suspicion. This bill supposes that men are but men; it confides in no integrity, it trusts no character; it inculcates the wisdom of a jealousy of power, and annexes responsibility not only to every action, but even to the inaction of those who

\* Mr. Dundas's bill, brought in the preceding year.

are to dispense it. The necessity of these provisions must be evident, when it is known that the different misfortunes of the company resulted not more from what the servants *did*, than from what the masters did *not*.

To the probable effects of the learned gentleman's bill and this, I beg to call the attention of the house. Allowing, for argument's sake, to the governour general of India, under the first named bill, the most unlimited and superiour abilities, with soundness of heart and integrity the most unquestionable; what good consequences could be reasonably expected from his extraordinary, extravagant, and unconstitutional power, under the tenure by which he held it? Were his projects the most enlarged, his systems the most wise and excellent which human skill could devise; what fair hopes could be entertained of their eventual success, when, perhaps, before he could enter upon the execution of any measure, he may be recalled in consequence of one of those changes in the administrations of this country, which have been so frequent for a few years, and which some good men wish to see every year? Exactly the same reasons which banish all rational hope of benefit from an Indian administration under the bill of the learned gentleman, justify the duration of the proposed commission. If the dispensers of the plan of governing India (a place from which the answer of a letter cannot be expected in less than twelve months) have not greater stability in their situations than a British ministry—adieu to all hopes of rendering our eastern territories of any real advantage to this country, adieu to every expectation of purging or purifying the Indian system, of reform, of improvement, of reviving confidence, of regulating the trade upon its proper principles, of restoring tranquillity, of reestablishing the natives in comfort, and of securing the perpetuity of these blessings, by the cordial reconciliation of the Indians with their former tyrants upon fixed terms of amity, friendship, and fellowship. I will leave the house and the kingdom to judge which is best calcu-

lated to accomplish those salutary ends; the bill of the learned gentleman, which leaves all to the discretion of one man; or the bill before you, which depends upon the duty of several men, who are in a state of daily account to this house, of hourly account to the ministers of the crown, of occasional account to the proprietors of East India stock, and who are allowed sufficient time to practise their plans, unaffected by every political fluctuation.

But the learned gentleman wishes the appointment of an Indian secretary of state in preference to these commissioners. In all the learned gentleman's ideas on the government of India, the notion of a new secretary of state for the Indian department springs up, and seems to be cherished with the fondness of consanguinity;\* but that scheme strikes me as liable to a thousand times more objections than the plan in agitation: nay, the learned gentleman had rather, it seems, the affairs of India were blended with the business of the office which I have the honour to hold. His good disposition towards me upon all occasions cannot be doubted, and his sincerity in this opinion is unquestionable. I beg the house to attend to the reason which the learned gentleman gives for this preference, and to see the plights to which men, even of his understanding, are reduced who *must* oppose. He laughs at the responsibility of the commissioners to this house, who, in his judgment, will find means of soothing and softening, and meliorating the members into an oblivion of their maladministration. What opinion has the learned gentleman of a secretary of state? Does he think *him* so inert, so inactive, so incapable a creature, that with all this vaunted patronage of the seven commissioners in his own hands, the same means of soothing, and softening, and meliorating are

\* Mr. Dundas's bill was to have appointed a secretary of state for the Indian department, and to have made the governor general despotick in India. If the earl of Shelburne had continued in power, it was understood that Mr. Dundas was to be the Indian secretary. Mr. Fox here alluded to this report.

thrown away upon him. The learned gentleman has been for some years conversant with ministers; but his experience has taught him, it seems, to consider secretaries not only untainted and immaculate, but innocent, harmless, and incapable. In his time, secretaries were all purity; with every power of corruption in their hands; but so inflexibly attached to rigid rectitude, that no temptation could seduce them to use that power for the purpose of corrupting, or, to use his own words, for soothing, or softening, or meliorating. The learned gentleman has formed his opinion of the simplicity and inaction of secretaries, from that golden age of political probity, when his own friends were in power, and when himself was every thing but a minister. This erroneous humanity of opinion arises in the learned gentleman's unsuspecting, unsullied nature, as well as in a commerce with only the best and purest ministers of this country, which has given him so favourable an impression of a secretary of state, that he thinks this patronage, so dangerous in the hands of seven commissioners, perfectly safe in *his* hands. I leave to the learned gentleman that pleasure which his mind must feel under the conviction with which he certainly gives this opinion; but I submit to every man who hears me, what would be the probable comments of the other side of the house, had I proposed either the erection of an Indian secretary, or the annexation of the Indian business to the office which I hold.

In the assemblage of the learned gentleman's objections, there is one still more curious than those I have mentioned. He dislikes this bill because it establishes an *imperium in imperio*. In the course of opposition to this measure, we have been familiarized to hear certain sentiments and particular words in this house—but directed, in reality, to *other* places. Taking it therefore for granted, that the learned gentleman has not so despicable an idea of the good sense of the members, as to expect any more attention within these walls to such a dogma, that has been shown to the favourite phrase of his honourable friend



near him,\* who calls a bill which backs this sinking company with the credit of the state, a *confiscation* of their *property*. I would wish to ask the learned gentleman, if he really holds the understanding, even of the multitude in such contempt, as to imagine this species of argument can have the very slightest effect? The multitude know the fallacy of it as well as the learned gentleman himself. They know that a dissolution of the East India company has been wished for scores of years, by many good people in this country, for the *very reason* that it was an *imperium in imperio*. Yet the learned gentleman, with infinite gravity of face, tells you he dislikes this bill, because it establishes this novel and odious principle. Even a glance of this bill, compared with the present constitution of the company, manifests the futility of this objection, and proves that the company is, in its present form, a thousand times more an *imperium in imperio* than the proposed commissioners. The worst species of government is that which can run counter to all the ends of its institution with impunity. Such exactly was the East India company. No man can say that the directors and proprietors have not, in numerous instances, merited severe infliction; yet, who did ever think of a legal punishment for either body? Now, the great feature of this bill is to render the commissioners amenable, and to punish them upon delinquency.

The learned gentleman prides himself that his bill did not meddle with the commerce of the company; and another gentleman, after acknowledging the folly of leaving the government in the hands of the company, proposes to separate the commerce entirely from the dominion, and leave the former safe and untouched to the company itself. I beg leave to appeal to every gentleman conversant in the company's affairs, whether this measure is, in the nature of things, practicable at this moment. That the separation of the commerce from the government of the East, may be

\* Mr. Pitt.

ultimately brought about I doubt not; but when gentlemen reflect upon the immediate state of the company's affairs, when they reflect that their government was carried on for the sake of their commerce, that both have been blended together for such a series of years; when they review the peculiar, perplexed, and involved state of the eastern territories, their dissimilitude to every system in this part of the globe, and consider the deep and laborious deliberation with which every step for the establishment of a salutary plan of government, in the room of the present odious one, must be taken—the utter impossibility of instantly detaching the governing power from interference with the commercial body, will be clear and indubitable.

A gentleman has asked, why not choose the commissioners out of the body of directors; and why not leave the choice of the assistant directors in the court of proprietors? That is to say, why not do that which would infallibly undo all you are aiming at? I mean no general disparagement when I say that the body of the directors have given memorable proofs that they are not the sort of people to whom any man can look for the success or salvation of India. Amongst them there are, without doubt, some individuals, respectable both for their knowledge and integrity; but, I put it to the candour of gentlemen, whether they are the species of men whose wisdom, energy, and diligence, would give any promise of emancipating the East India concerns from their present disasters and disgraces. Indeed both questions may be answered in two words. Why not choose the directors, *who have ruined the company?* Why not leave the power of election in the proprietors, *who have thwarted every good attempted by the directors?*

The last point adverted to by the learned gentleman relates to *influence*; and upon his remarks, combined with what fell from some others upon the same subject, I beg leave to make a few observations. Much of my life has been employed to diminish the inordi-

nate influence of the crown. In common, with others, I succeeded, and I glory in it. To support that kind of influence which I formerly subverted, is a deed of which I shall never deserve to be accused. The affirmation with which I first introduced this plan, I now repeat. I reassert that this bill as little augments the influence of the crown, as any measure which can be devised for the government of India, that presents the slightest promise of solid success; and that it tends to increase it in a far less degree than the bill proposed by the learned gentleman. The very genius of influence consists in hope or fear; fear of losing what we have, or hope of gaining more. Make these commissioners removable at will, and you act all the little passions of human nature afloat. If benefit can be derived from the bill, you had better burn it than make the duration short of the time necessary to accomplish the plans it is destined for. That consideration pointed out the expediency of a fixed period; and in that respect it accords with the principle of the learned gentleman's bill; with this superiour advantage, that instead of leaving the commissioners liable to all the influence which springs from the appointment of a governor general, removable at *pleasure*, this bill invests them with the power for the *time specified* upon the same tenure that British judges hold their station; removable upon delinquency, punishable upon guilt, but fearless of power if they discharge their trust, liable to no seducement, and with full time and authority to execute their functions for the common good of the country, and for their own glory. I beg of the house to attend to this difference, and then judge upon the point of increasing the influence of the crown, contrasted with the learned gentleman's bill.

The state of accusations against me upon this subject of *influence*, is truly curious. The learned gentleman,\* in strains of emphasis, declares, that this bill diminishes the influence of the crown beyond all

\* Mr. Dundas.

former attempts, and calls upon those who formerly voted with him in support of that influence, against our efforts to reduce it, and who now sit near me, to join him now in opposing my attempts to diminish that darling influence. He tells them I *autherreded* *He red*; that I am outdoing all my former outdoings, and proclaims me as the merciless and insatiate enemy of the influence of the crown. *He reded him. I red.*

Down sits a learned gentleman, and upstarts an honourable gentleman, with a charge against me, upon the same subject, of a nature the direct reverse. I have fought under your banners, cries the honourable gentleman, \* against that fell giant, the influence of the crown; I have bled in that battle which you commanded; and have a claim upon the rights of soldiiership. You have conquered through us; and now that victory is in your arms, you turn traitor to our cause, and carry over your powers to the enemy. The fiercest of your former combatants in the cause of influence falls far short of you at this moment; your attempts in re-erecting this monster, exceed all the exertions of your former foes. This night you will make the influence of the crown a colossus, that shall bestride the land and crush every impediment. I impeach you for treachery to your ancient principles. Come, come, and divide with us!

This honourable gentleman, after a thrust or two at the coalition, sits down; and whilst the house is perplexing itself to reconcile these wide differences, the right honourable gentleman over the way, confounds all past contradiction, by combining, in his own person, these extravagant extremes. He acknowledges that he has digested a paradox; and a paradox well he might call it, for never did a grosser one puzzle the intellects of a public assembly. By a miraculous kind of discernment, he has found out, that the bill both *increases* and *diminishes* the influence of the crown.

\* Mr. Martin.

† Mr. W. Pitt.

The bill diminishes the influence of the crown, says one; you are wrong, says a second, it increases it: you are both right, says a third, for it both increases and diminishes the influence of the crown. Now, as most members have one or other of these opinions upon the subject, the honourable gentleman can safely join with all parties upon this point; but few, I trust, will be found to join him.

Thus, sir, is this bill combated, and thus am I accused. The nature and substance of these objections I construe as the strongest comment upon the excellence of the bill. If a more rational opposition *could* be made to it, no doubt it would. \* The truth is, it increases the influence of the crown, and the influence of party as little as possible; and if the reform of India, or any other matter, is to be postponed until a scheme be devised, against which ingenuity, or ignorance, or caprice, shall not raise objections, the affairs of human life must stand still.

I beg the house will attend a little to the manner in which the progress of this bill has been retarded; especially by the right honourable gentleman. \* First, the members were not all in town, and time was desired upon that account. Next, the finances of the East India company were mistated by me, and time was desired to prove that. The time came, the proofs exhibited, counsel heard, and yet the issue was, that my former statement, instead of being controverted, became more established by the very proofs which were brought to overturn it. The honourable gentleman has misrepresented me to night again: he has an evident pleasure in it, which indeed I cannot prevent; but I can prevent this house and this country from believing him. He prefers the authority of his own conception (eager enough in all conscience to misunderstand me) of what I said, to my own repeated declarations of my own meaning. He supposes I mistake because he wishes it. I never did say, the company were absolute bankrupts to the amount

of the debt; but I said there was immediate necessity of paying that given sum, without any immediate means of providing for it. The account of the company's circumstances, presented last week, furnished matter of triumph to the honourable gentleman for the full space of *three hours*, that is to say, whilst counsel were at the bar. I made no objection to the account but this *stifling* one—that 12,000,000*l.* were stated which ought not to appear at all there, and which were placed there only for delusion and fallacy. I never objected to the arithmetick of the account. The sums, I doubt not, were accurately cast up even to a figure; yet the house will recollect, that the honourable gentleman, about this very hour of that debate, endeavoured to protract the business to the next day, upon assuring the house that the company would then support their statement. I refused to accede, because I knew the matter to be mere shifting, and manoeuvring for a vote, and that the company *could not* support their statement. Was I right? The house sees whether I was: the house sees the finance post is now totally abandoned, and for the best reason in the world, because it is no longer tenable. But the honourable gentleman is indeed a man of resources. He now gives me a challenge, and I beg the house to remark, that I accept his challenge, and that I prophecy he will no more meet me upon this than upon the former points.

But there is no limit to a youthful and vigorous fancy. The right honourable gentleman just now, in very serious terms, and with all his habitual gravity, engages, if the house will join in opposing us to night, that he will digest and methodize a plan, the outline of which he has already conceived. He has nothing now to offer; but justly confiding in the fertility of his own imagination, and the future exercise of his faculties, he promises that he *will* bring a plan, *provided* the majority of this house will join him to-night. Now, if ever an idea was thrown out to pick up a stray vote or two in the heel of a debate, by a device, the idea given awhile ago by the honourable

gentleman is precisely such; but if I can augur rightly from the complexion of the house, his present will have exactly the same success with all his past stratagems to oppose this bill.\*

His learned friend,† with singular placidness, without smile or sneer, has said, “as this measure was probably decided upon some time since, the East India company, who could not expect such a blow, ought to have been informed of the intended project. The company was evidently unaware of this attack, and, in fairness, should have been apprized of it.” Does the learned gentleman imagine men are in their sober senses who listen to such cavilling and quibbling opposition? The company, unaware of this attack! The learned gentleman’s own labours, independent of any other intimation, had been an ample warning to the company to be prepared. Every man in the kingdom, who reads a newspaper, expected something; and the only wonder with the nation was, how it could be so long delayed. The reports of the committees alarmed the public so much, for the honour of the country, and for the salvation of the company, that all eyes were upon East India affairs. This sort of observation had indeed much better come from any other man, in this house, than from that identical gentleman.

If these were not sufficient to rouse the attention and diligence of the company, his majesty’s speech at the commencement and conclusion of the late session of parliament, gave them note of preparation in the most plain and decisive terms. In his opening speech, his majesty thus speaks to parliament upon the subject of India:—

“The regulation of a vast territory in Asia, opens a large field for your wisdom, prudence, and foresight. I trust that you will be able to form some

\* He was right; for the ministry had an accession of five votes this night above the former division.

† Mr. Dundas.

fundamental laws which may make their connexion with Great Britain a blessing to India; and that you will take therein proper measures to give all foreign nations, in matters of foreign commerce, an entire and perfect confidence in the probity, punctuality, and good order of our government. You may be assured that whatever depends upon me, shall be executed with a steadiness, which can alone preserve that part of my dominions, or the commerce which arises from it."

The learned gentleman, who knows more of the dispositions of the cabinet at that time than I do, can better tell whether any measure of this nature was then intended. The words are very wide, and seem to portend at least something very important; but whether any thing similar to this measure was meant, as this passage seems to imply, or not, is indifferent to the point in question: this is clear from it, that it gives a very ceremonious warning to the East India company; enough surely to expose the weakness and futility of the learned gentleman's remark. The changes and circumstances of the cabinet, in the course of the last session, can be the only excuse for the delay of some decisive measure with regard to India; and if in addition to all these, any thing more is requisite to confirm the notoriety of parliament's being to enter upon the business, the following paragraph of the king's closing speech, last July, completes the mass of evidence against the learned gentleman.

His majesty, after intimating a belief that he shall be obliged to call his parliament together earlier than usual, thus speaks:—

"The consideration of the affairs of the East Indies will require to be resumed as early as possible, and to be pursued with a serious and unremitting attention." Superadd to all this, the part of the king's opening speech this year upon India; and if the whole do not constitute sufficient testimony that the company had full notice, nothing can.



Yet, notwithstanding all this, the learned gentleman accuses us of *surprising* the company; and his right honourable friend, in hopes his proposal of another bill may have weight in the division—repeats the hackneyed charge of *precipitation*, and forces the argument for delay in a taunt, “that we wish to get rid of our torments, by sending this bill to the other house.” The honourable gentleman’s talents are splendid and various; but I assure him, that all his efforts, for the last eight days, have not given me a single torment. Were I to choose a species of opposition to ensure a ministerial tranquillity, it would be the kind of opposition which this bill has received, in which every thing brought to confute has tended to confirm, and in which the arguments adduced to expose the weakness, have furnished materials to establish the wisdom of the measure: so impossible is it, without something of a tolerable cause, even for the right honourable gentleman’s abilities to have effect, though his genius may make a flourishing and superior figure in the attempt.

Before I proceed to the other parts of the debate, I wish to say one word upon a remark of the learned gentleman: he says, that the clause relative to the zemindars was suggested by his observations. God forbid I should detract from the merit, or diminish the desert of any man. Undoubtedly that excellent part of the regulation bill derives from the learned gentleman; and if he were in this house when I introduced the subject of India, he would have known that I did him full and complete justice upon that point.

My noble friend\* has said, this bill does not arise from the poverty of the company, but that liberal policy and national honour demanded it. Upon the last day this bill was debated, I confined myself chiefly to the demonstration of the fallacy and imposture of that notable schedule presented by the East India company; and having proved its falsehood, I can now with

\* Lord John Cavendish.

the greater safety declare, that if every shilling of that fictitious property was real and forthcoming, a bill of this nature was not therefore the less necessary. I thought we were fully understood upon this point, from the opening speech in this business, which did not so degrade the measure as to say it originated in the poverty of the company, which, as my noble friend rightly remarks, was the smallest reason for its adoption, and which opinion is not, as the right honourable gentleman insinuates, "shifting," but recognising and recording the true grounds of the bill. If any misunderstanding then, has hitherto taken place upon this head, it will, I trust, cease henceforth, and so odious a libel upon this country will not pass current, as that sordid motives only induced the government of England to *that* which we were bound to do, as politicians, as christians, and as men, by every consideration which makes a nation respectable, great and glorious!

Having vindicated the bill from this aspersion, and founded it upon that basis which every honest and sensible man in England must approve, I may be allowed to say that some regard may be had even to the mean and mercenary upon this subject (a portion of whom we have here, in common with all other countries.) Will such men endure with temper a constant drain upon this kingdom, for the sake of this monopolizing corporation? Will those, for instance, who clamour against a two-penny tax, afford, with good humour, million after million to the East India company? The sinking fund is at this moment a million the worse for the deficiency of the company; and as the noble lord\* says, an extent must in three weeks arrest their property, if parliament does not interpose or enable them to discharge a part of their debt to the crown. Let those, therefore, who think the commerce ought to be instantly separated from the dominion (were that at this time possible) and who think it ought to be left wholly in the present hands, reflect,

\* Lord J. Cavendish.

that the formation of a vigorous system of government for India is not more incumbent upon us, than the establishment of the eastern trade upon such principles of solidity and fitness, as shall give some just hopes that the publick may be speedily relieved from the monstrous pressure of constantly supporting the indigence of the company.

I have spoke of myself very often in the course of what I have said this night, and must speak still more frequently in the course of what I have to say: the house will see this awkward task is rendered indispensable, infinitely more having been said concerning *me*, during the debate, than concerning the question, which is the proper subject of agitation. The right honourable gentleman\* says, that nothing ever happened to give him an ill impression of my character, or to prevent a mutual confidence. He says rightly; there have been interchanges of civility, and amicable habits between us, in which I trust I have given him no cause to complain. But after pronouncing a brilliant eulogy upon me and my capacity to serve the country, the honourable gentleman considers me at the same time the most dangerous man in the kingdom. (Mr. Pitt said across the house, "*dangerous only from this measure.*" To which Mr. Fox instantly made this reply) I call upon the house to attend to the honourable gentleman; he thinks me dangerous *only from this measure*, and confesses, that hitherto he has seen nothing in my conduct to obliterate his good opinion. Compare this with his opposition during the last and the present session. Let every man reflect, that up to this moment the honourable gentleman deemed me worthy of confidence, and competent to my situation in the state. I thank him for the *support* he has afforded to the minister he thus esteemed, and shall not press the advantage he gives me, further than leaving to himself to reconcile his practice and his doctrine in the best manner he can.

\* Mr. William Pitt.

The honourable gentleman could not for one night pass by the *coalition*, yet I think he might have chosen a fitter time to express his indignation against the noble lord\* than the present moment. An attack upon the noble lord in his presence would bear a more liberal colour; and the cause of his absence now,† would surely rather disarm than irritate a generous enemy. There are distinctions in hatred, and the direst foes upon such occasions moderate their aversion. The coalition is, however, a fruitful topic, and the power of traducing it, which the weakest and meanest creatures in the country enjoy and exercise, is of course equally vested in men of rank and parts, though every man of parts and rank would not be apt to participate the privilege. Upon the coalition, the honourable gentleman is welcome to employ his ingenuity, but upon another subject alluded to by him, I shall beg leave to advise, nay even to instruct him.

In what system of ethicks will the honourable gentleman find the precept taught of ripping up old sores, and reviving animosities among individuals, of which the parties themselves retain no memory?‡ This kind of practice may incur a much worse charge than weakness of understanding, and subject a man to much greater imputations than are commonly applied to political mistakes of party violence. The soundness of the heart may be liable to suspicion, and the moral character be in danger of suffering by it; in the opinion of mankind. To cover the heats, and obliterate the sense of former quarrels between two persons, is a very distinguished virtue; to renew the subject of *such* differences, and attempt the revival of *such* disputes, deserves a name which I could give

\* Lord North.

† Lord North left the house, in a state of indisposition, about midnight.

‡ Alluding to the passage of that famous speech of Mr. Fox's, which produced the duel between him and Mr. Adam, quoted by Mr. Pitt.

it, if that honourable gentleman had not forgotten himself, and fallen into some such deviation. He values himself, I doubt not, too much, again to make a similar slip, and must even feel thankful to me for the counsel I thus take the liberty to give him.

An honourable gentleman under the gallery,\* to whom an abuse of the coalition seems a sort of luxury, wishes that a starling were at the right hand of the chair to cry out disgraceful coalition! Sir, upon this subject I shall say but a few words.

The calamitous situation of this country required an administration whose stability could give it a tone of firmness with foreign nations, and promise some hope of restoring the faded glories of the country. Such an administration could not be formed without some junction of parties: and if former differences were to be an insurmountable barrier to union, no chance of salvation remained for the country, as it is well known, that four publick men could not be found, who had not, at one time or other, taken opposite sides in politics. The great cause of difference between us and the noble lord in the blue ribbon no longer existed; his personal character stood high; and thinking it safer to trust him than those who had before deceived us, we preferred to unite with the noble lord. A similar junction, in 1757, against which a similar clamour was raised, saved the empire from ruin, and raised it above the rivalry of all its enemies. The country, when we came into office, bore not a very auspicious complexion; yet, sir, I do not despair of seeing it once again resume its consequence in the scale of nations, and make as splendid a figure as ever. Those who have asserted the impossibility of our agreeing with the noble lord and his friends, were false prophets; for events have belied their augury. We have differed like men, and like men we have agreed.

\* Mr. Martin.

A body of the best and honestest men in this house, who serve their country without any other reward than the glory of the disinterested discharge of their public duty, approved that junction, and sanctify the measure by their cordial support.

Such, sir, is this coalition, which the state of the country rendered indispensable; and for which the history of every country records a thousand precedents; yet to this the term disgraceful is applied. Is it not extraordinary, then, that gentlemen should be under such spells of false delusion, as not to see, that if calling it disgraceful makes it so, these epithets operate with equal force against themselves. If the coalition be disgraceful, what is the *anti-coalition*? When I see the right honourable gentleman\* surrounded by the early objects of his political, nay his hereditary† hatred, and hear him revile the coalition, I am lost in the astonishment how men can be so blind to their own situation, as to attempt to wound us in this particular point, possessed as we are of the power of returning the same blow, with the vulnerable part staring us directly in the face. If the honourable gentleman under the gallery wishes that a starling were perched up on the right hand of the chair, I tell him, that the wish is just as reasonable, to have another starling upon the left hand of the chair, to chirp up *coalition* against *coalition*, and so harmonize their mutual disgrace, if disgrace there be.

With the same consistency, an honourable gentleman calls us *deserters*!—*us*! a few cold and disaffected members fall off, then turn about, and, to palliate their own defection, call the body of the army *deserters*! *We* have not deserted; here we are a firm phalanx. Deserted indeed we have been in the moment of disaster, but never dejected, and seldom complaining. Some of those who rose upon our wreck, and who eagerly grasped that power which we had the labour of erecting, now call us deserters.

\* Mr. Pitt.

† Mr. Jenkinson, Mr. Dundas, &c. sat near Mr. Pitt.

We retort the term with just indignation. Yet whilst they presume we have the attributes of men, they would expect us to have the obduracy of savages. They would have our resentments insatiate, our rancour eternal. In our opinion, an oblivion of useless animosity is much more noble; and in that the conduct of our accusers goes hand in hand with us. But I beg of the house, and I wish the world to observe, that although, like them, we have abandoned our enmities, we have not, like them relinquished our friendships; but there are a set of men, who, from the mere vanity of having consequence as decisive voters, object to all stable government: these men hate to see an administration so fixed, as not to be moveable by their vote. They assume their dignity on the mere negative merit of not accepting places; and in the pride of this self denial, and the vanity of fancied independence, they object to every system that has a solid basis, because their consequence is unfelt. Of such men I cannot be the panegyrist, and I am sorry that some such men are among the most estimable in the house.

An honourable gentleman advises me for the future not to mention the name of the marquis of Rockingham, who, he says, would never countenance a bill of this kind. This is indeed imposing hard conditions upon those who have willingly suffered a sort of political martyrdom in the cause of that noble lord's principles; those who surrendered pomp and power, rather than remain where his principles ceased to be fashionable, and were withering into contempt. I venerate the name of that noble marquis, and shall ever mention it with love and reverence; but at no period of my life with more confidence than at this moment, when I say, that his soul speaks in every line of the bill before you, for his soul speaks in every measure of virtue, wisdom, humane policy, general justice, and national honour. The name of the noble lord who enjoys his fortune, has been mentioned in this debate, and will be mentioned again by me; I will tell the honourable gentlemen, that this noble

lord,\* though not the issue of his loins, inherits, with his property, the principles of that noble marquis in all their purity and soundness; and is as incapable as that noble marquis himself, or as any man on earth, of countenancing any act which either immediately or ultimately tended to the prejudice of his country, or the injury of the constitution. I have had the honour of knowing the noble earl from an early age. I have observed the motives of his actions; I am endeared to him by every tie of kindred sentiment, and of mutual principle. A character more dignified and exalted exists not in the empire; a mind more firmly attached to the constitution of his country: he is, what the nation would desire in the heir of lord Rockingham, the only compensation that we could have for his loss.

An honourable gentleman† at the other side, has used violent terms against this bill and the movers of it. Sir, I tell that honourable gentleman,‡ that the movers of this bill are not to be browbeaten by studied gesture, nor frightened by tremulous tones, solemn phrases, or hard epithets. To arguments they are ready to reply; but all the notice they can take of assertions, is to mark to the house, that they are only assertions. The honourable gentleman again repeats his favourite language of our having *seized upon the government*; his majesty changed his ministry last April, in consequence of a vote of this house; his majesty did the same twelve months before, in consequence of a vote of this house. His majesty in so doing followed the example of his predecessors; and his successors will, I doubt not, follow the example of his majesty. The votes of parliament have always decided upon the duration of ministry, and always will, I trust. It is the nature of our constitution; and those who dislike it, had better attempt to alter it. The honourable gentleman called the change

\* Earl Fitzwilliam.

† Mr. T. Pitt.

‡ Looking directly in his face.



in 1782 a glorious one ; this, in 1783 a disgraceful one. Why? For a very obvious, though a very bad reason. The honourable gentleman assisted in effecting the first, and strenuously laboured to prevent the second. The first battle he fought with us ; the second against us, and we vanquished him. In 1782 his friends were *out*, and would be *in*. In 1783 his friends were *in*, nor *would* go out. Thus, having done without him what we once did with him, the house sees his motive. It is human nature certainly ; but certainly not the better part of human nature. He says he is no party man, and he abhors a systematick opposition. I have always acknowledged myself to be a party man ; I have always acted with a party in whose principles I have confidence ; and if I had such an opinion of any ministry as the gentleman professes to have of us, I would pursue their overthrow by a systematick opposition. I have done so more than once, and I think that, in succeeding, I saved my country. Once the right honourable gentleman, as I have said, was with me, and our conduct was fair, manly, constitutional, and honourable. The next time he was against me, and our conduct was violent and unconstitutional, it was treasonable, and yet the means were in both instances the same ; the means were the votes of this house.

A game of a two fold quality is playing by the other side of the house upon this occasion, to which I hope the house, and I hope the kingdom, will attend. They are endeavouring to injure us through two channels at the same time ; through a certain great quarter, and through the people. They are attempting to alarm the first, by asserting that this bill increases the influence of ministry *against* the crown ; and rousing the people, under an idea that it increases the influence of the crown *against* them. That they will fail in both I doubt not. In the great quarter I trust they are well understood, and the princely mind of that high person is a security against their devices : they are running swiftly to take off whatever little imposition might have been put upon any part, even of the mul-

titude, and I wish to rescue the character of the publick understanding from the contemptuous implication, that it is capable of being gulled by such artifices. I feel for my country's honour when I say, that Englishmen, free themselves, and fond of giving freedom to others, disdain these stratagems, and are equally above the silliness of crediting the revilers of this act, as above the baseness of confederating or making common cause with those who would support a system which has dishonoured this country and which keeps thirty millions of the human race in wretchedness. I make allowances for the hair brained headstrong delusions of folly and ignorance, and the effects of design. To such evils every measure is liable, and every man must expect a portion of the consequence. But for the serious and grave determinations of the publick judgment I have the highest value: I ever had, and ever shall have. If it be a weakness, I confess it, that to lose the good opinion of even the meanest man, gives me some pain; and whatever triumph my enemies can derive from such a frame of mind, they are welcome to. I do not, after the example of the honourable gentleman who began this debate,\* hold the opinion of constituents in disparagement. The clear and decided opinion of the more reasonable and respectable should, in my opinion, weigh with the member, upon the same principle that, I think, the voice of the nation should prevail in this house; and in every other place. But when the representative yields to the constituent, it should indeed be by the majority of the reasonable and respectable, and not, as we shall see in a day or two, some of the honestest men in England voting against the most popular tax ever introduced into this house, in direct opposition to their own conviction, and *not* upon the opinion of either the more respectable or reasonable class of their constituents.

My noble friend,† with his characteristick spirit, has said, that we never sought power by cabal or in-

\* Mr. Powys.

† Lord John Cavendish.

trigue, or underhand operations; and this he said in reply to an honourable gentleman,\* whose conduct demonstrates that he thinks *those* the surest path for his friends. This bill, as a ground of contention, is farcical: this bill, if it admitted it, would be combated upon its intrinsick qualities, and not by abusing the coalition, or raising a clamour about influence; but why don't the gentlemen speak out fairly, as we do; and then let the world judge between us? Our love and loyalty to the sovereign are as ardent and firm as their own. Yet the broad basis of publick character, upon which we received, is the principle by which we hope to retain this power, convinced that the surest road to the favour of the prince, is by serving him with zeal and fidelity; that the safest path to popularity, is by reducing the burthen, and restoring the glory of the nation. Let those (looking at Mr. Jenkinson) who aim at office by *other* means, by inscrutable and mysterious methods, speak out; or, if they will not, let the world know it is because their arts will not bear examination, and that their safety consists in their obscurity. *Our* principles are well known; and I should prefer to perish with them, rather than prosper with any other.

The honourable gentleman under the gallery,† also says, he dislikes systematick opposition. Whether perpetually rising up with peevish, capricious objections to every thing proposed by us, deserve that name or not, I leave the gentleman himself to determine, and leave the house to reflect upon that kind of conduct which condemns the theory of its own constant practice; but I meet the gentleman directly upon the principle of the term. He dislikes systematick opposition; now I like it. A systematick opposition to a dangerous government is, in my opinion, a noble employment for the brightest faculties; and if the honourable gentleman thinks our administration a bad one, he is right to contribute to its downfall. Opposition is natural in such a political

\* Mr. T. Pitt.

† Mr. Martin.

system as ours; it has subsisted in all such governments; and perhaps it is necessary. But to those who oppose it, it is extremely essential that their manner of conducting it incur not a suspicion of their motives. If they appear to oppose from disappointment, from mortification, from pique, from whim, the people will be against them. If they oppose from publick principle; from love of their country rather than hatred to administration, from evident conviction of the badness of measures, and a full persuasion that in their resistance to men, they are aiming at the publick welfare, the people will be with them. We opposed upon *these* principles, and the people were with us; if we are opposed upon *other* principles, they will not be against us. Much labour has been employed to infuse a prejudice upon the present subject; and I have the satisfaction to believe, that the labour has been fruitless; (making a reasonable exception for the mistakes of the uninformed, the first impressions of novelty, and the natural result of deliberate malice) we desire to be tried by the test of this bill, and risk our character upon the issue: confiding thoroughly in the good sense, the justice, and the spirit of Englishmen. Not lofty sounds, nor selected epithets, nor passionate declamation in this house, nor all the sordid efforts of interested men out of this house (of men whose acts in the East have branded the British name, and whose ill-gotten opulence, working through a thousand channels to delude and debauch the publick understanding) can fasten odium upon this measure, or draw an obloquy upon the authors of it. We have been tried in the cause of the publick; and until we desert that cause, we are assured of publick confidence and protection.

The honourable gentleman\* has supposed for me a soliloquy, and has put into my mouth some things which I do not think are likely to be attributed to me: he insinuates that I was incited by avarice, or ambition, or party spirit. I have failings in common

\* Mr. Powys.

with every human being, beside my own peculiar faults: but of avarice I have indeed held myself guiltless. My abuse has been, for many years, even the profession of several people; it was their traffick, their livelihood; yet until this moment I knew not that avarice was in the catalogue of the sins imputed to me. Ambition I confess I have, but not ambition upon a narrow bottom, or built upon paltry principles. If, from the devotion of my life to political objects, if from the direction of my industry to the attainment of some knowledge of the constitution, and the true interests of the British empire, the ambition of taking no mean part in those acts that elevate nations, and make a people happy, be criminal, that ambition I acknowledge. And as to party spirit,—that I feel it, that I have been ever under its impulse, and that I ever shall, is what I proclaim to the world. That I am one of a party, a party never known to sacrifice the interests, or barter the liberties of the nation for mercenary purposes, for personal emolument or honours; a party linked together upon principles which comprehend whatever is dear and most precious to freemen, and essential to a free constitution, is my pride and my boast.

The honourable gentleman has given me one assertion, which it is my pride to make: he says that I am connected with a number of the first families in the country. Yes, sir, I have a peculiar glory that a body of men renowned for their ancestry, important for their possessions, distinguished for their personal worth, with all that is valuable to men at stake, hereditary fortunes and hereditary honours, deem me worthy of their confidence. With such men I am something,—without them, nothing. My reliance is upon their good opinion; and in that respect, perhaps, I am fortunate. Although I have a just confidence in my own integrity, yet as I am but man, perhaps it is well that I have no choice but between my own eternal disgrace and a faithful discharge of my publick duty, whilst these kind of men are overseers of my conduct, whilst men whose uprightness of heart and

spotless honour are even proverbial in the country,\* are the vigils of my deeds, it is a pledge to the publick for the purity and rectitude of my conduct. The prosperity and honour of the country are blended with the prosperity and honour of these illustrious persons. They have so much at stake, that if the country falls, they fall with it; and to countenance any thing against its interest, would be a suicide upon themselves. The good opinion and protection of these men is a security to the nation for my behaviour, because if I lose them, I lose my all.

Having said so much upon the extraneous subjects introduced by the honourable gentleman into the debate, I shall proceed to make some observations upon the business in question. When the learned gentleman brought in his bill last year, the house saw its frightful features with just horror; but a very good method was adopted to soften the terrors of the extravagant power that bill vested in the governor general. The name of a noble lord,† was sent forth at the same time, whose great character lent a grace to a proposition, which, destitute of such an advantage, could not be listened to for one moment. Now, sir, observe how differently we have acted upon the same occasion.

Earl Fitzwilliam has been spoken of here this day, in those terms of admiration with which his name is always mentioned. Take notice, however, that we did not avail ourselves of the fame of his virtue and abilities in passing this bill through the house.

If such a thing were to have taken place as the institution of an Indian secretaryship (according to the suggestions of some gentlemen) this noble lord would certainly have been the very person whom, for my part, I should have advised his majesty to invest with that office. Yet, although his erect mind and spotless honour would have held forth to the publick the fullest confidence of a faithful execution of its duties, the objections in regard to influence upon a removal

\* Looking at lord John Cavendish.

† Lord Cornwallis.

ble officer, are tenfold in comparison with the present scheme. The house must now see, that with all the benefits we might derive from that noble lord's character—that although his name would have imparted a sanctity, an ornament, and an honour to the bill, we ushered it in without that ceremony, to stand or fall by its own intrinsic merits, neither shielding it under the reputation, nor gracing it under the mantle, of any man's virtue. Our merit will be more in this, when the names of those are known whom we mean to propose to this house, to execute this commission.\* I will not—I will not name them; the bill shall stand or fall by its own merits, 'without aid or injury from their character. An honourable gentleman has said these commissioners will be made up of our "adherents and creatures." Sir, there is nothing more easy than to use disparaging terms; yet I should have thought the name of earl Fitzwilliam would have given a fair presumption that the colleagues we shall recommend to this house for the co-execution of this business with that noble lord, will not be of a description to merit these unhandsome epithets. I assure the honourable gentleman they are not. I assure him they are not men whose faculties of corrupting, or whose corruptibility, will give any alarm to this house, or to this country: they are men whose private and publick characters stand high and untainted; who are not likely to countenance depredation, or participate the spoils of rapacity. They are not men to screen delinquency, or to pollute the service by disgraceful appointments. Would such men as earl Fitzwilliam suffer unbecoming appointments to be made? Is earl Fitzwilliam a man likely to do the dirty work of a minister? If they, for instance, were to nominate a Paul Benfield to go to India in the supreme council, would earl Fitzwilliam subscribe to his appointment? This is the benefit of having a commission of high honour, chary of reputation, noble and

\* Name them said Mr. Arden, across the house.

pure in their sentiments, who are superiour to the little jobs and traffick of political intrigue.

But this bill, sir, presumes not upon the probity of the men; it looks to the future possibility of dissimilar successours, and to the morality of the present commissioners, who are merely human, and therefore not incapable of alteration. Under all the caution of this bill, with the responsibility it imposes, I will take upon me to say, that if the aggregate body of this board determined to use all its power for the purpose of corruption, this house, and the people at large, would have less to dread from them, in the way of influence, than from a few Asiaticks who would probably be displaced in consequence of this arrangement, some of whom will return to this country with a million, some with seven hundred thousand, some with five, beside the three or four hundred thousand of others, who are cut off in their career by the hand of fate. An inundation of such wealth is far more dangerous than any influence that is likely to spring from a plan of government so constituted as this proposed — whether the operation of such a mass of wealth be considered in its probable effects, upon the principles of the members of this house, or the manners of the people at large, more especially when a reflection that Orientalists are in general the most exemplary class of people in their morals, and in their deportment the most moderate, and corresponding with the distinction of their high birth and family, furnishes a very reasonable presumption, that the expenditure of their money will be much about as honourable as its acquirement.

I shall now, sir, conclude my speech with a few words upon the opinion of the right honourable gentleman.\* He says, “he will stake his character upon the danger of this bill.” I meet him in his own phrase, and oppose him, character to character; I risk my all upon the excellence of this bill; I risk upon it whatever is most dear to me, whatever men

\* Mr. Pitt.



most value, the character of integrity, of talents, of honour, of present reputation and future fame: these, and whatever else is precious to me, I stake upon the constitutional safety, the enlarged policy, the equity, and the wisdom of this measure, and have no fear in saying (whatever may be the fate of its authors) that this bill will produce to this country every blessing of commerce and revenue; and that by extending a generous and humane government over those millions whom the inscrutable destinations of Providence have placed under us in the remotest regions of the earth, it will consecrate the name of England amongst the noblest of nations.

## SIR HERCULES LANGRISHE'S SPEECH,

DELIVERED IN THE IRISH HOUSE OF COMMONS JANUARY 2d, 1792, ON A MOTION "THAT LEAVE BE GIVEN TO BRING IN A BILL FOR REMOVING CERTAIN RESTRAINTS AND DISABILITIES UNDER WHICH HIS MAJESTY'S CATHOLICK SUBJECTS LABOUR FROM STATUTES AT PRESENT IN FORCE."

THE speeches, which here follow each other, in the regular order of their delivery, arose out of a very animated debate on a bill,\* introduced by sir Hercules Langrishe into the Irish house of commons, to remove certain restraints, and disabilities, to which the Roman Catholics of that country were subjected.

The provisions of the bill went,

1st. To allow the Catholics to practise the profession of the law!

2. To restore to them the rights of education *entire and unrestrained.*

3. To sanction their intermarriage with protestants.

*Lastly.* To annul the injurious limitation on the number of apprentices to be kept by Catholic tradesmen.

The bill, after encountering some opposition in its progress, was ultimately carried in each house, *unanimously.*

It is creditable to the administration which then presided over Ireland, that it warmly lent all its weight and authority to a measure, which, otherwise, might have been defeated, by the influence of those narrow prejudices, and illiberal suspicions, that had before, too often, silenced the just pretensions of the Catholics.

\* Except the present one, which was on the motion to introduce the bill.

These speeches, we think, will be read with considerable interest. They are no mean specimens of that rich, spirited, and glowing eloquence which peculiarly distinguishes the discussions of the Irish bar, and senate.

### SPEECH, &c.

MR. SPEAKER,

IT is now just ten years since the cause of the Roman Catholics particularly engaged the attention of parliament; since we took our last review of those laws which the passions and prejudices, perhaps the pressure, of an intemperate season, had entailed upon them.

I think, sir, the present times and circumstances invite us to resume that duty.

The good offices we owe, one to another; the indulgence which is due to fellow subjects, recommended and endeared by the unimpeachable conduct of a century; the consideration that we owe to the national prosperity, all unite in calling our attention to the revision of this subject, at a time when the public mind is becoming more enlightened, and prejudices and jealousy are every day yielding to confidence and affection.

It is not without much satisfaction, and I may be allowed to say, some little pride too, that I take a part in this grateful duty; as I consider, amongst the few honours of my humble life, that of being almost the first member of the Irish parliament who ventured to state to you the imprudence and immorality of what were then the popery laws; as a system of jurisprudence, subversive of integrity, and as a scheme of government, which, whilst by its severity it alienated the body of the people, by its impolicy forbade them to vest in the state any hostage for their fidelity.

I own, sir, I was not able in my researches into Holy Writ, to meet with that particular passage of the scripture, that gives an authority to propagate the faith

by a perversion of morals, or, from a principle of piety, to prohibit the exercise of religious worship.

I could not presume to think that it was ever justifiable, for the sake of civil or ceremonial conformity, to build a code of religious laws on the ruins of almost every moral virtue and obligation; to sport with the most sacred feelings, and violate the fondest prepossessions of the human heart; to rob youth of education and age of authority; to seduce the son to become an interested informer against the piety of the father, and so break the bonds of all domestick fidelity and affection.

I know very well, that the state has a right to impose conditions on those who are to become the state itself. But to be entitled to common benefits, and equal protection, I know of no qualifications but allegiance, a peaceable demeanour, and obedience to the laws.

It is now many years since I first stated those ideas to parliament; but, from the temper of the times, perhaps the imbecility of the advocate, I was unsupported, and unsuccessful.

However, the agitation of truth must ever make an impression. Succeeding times became more enlightened, and religious animosity gave way to moral justice and political wisdom.

In the year 1774, the legislature first gratified the Roman Catholicks with an opportunity of testifying their allegiance, by framing an oath for them, competent to that test, without involving any article of religious faith, or speculative opinion.

Four years afterwards, in 1778, the legislature, wisely confiding in their oaths, rewarded their loyalty by some substantial concessions.

The act in their favour then passed, truly recites in the preamble, "That from their uniform peaceable behaviour for a long series of years, it appears reasonable and expedient to relax several of their incapacities and disabilities."

Accordingly it allowed them "To take leases of land for 999 years, and at any rent; to enjoy all such

estates that shall be left or transferred to them, and to dispose of the same by will or otherwise; and that they shall be devisable and transferrable, as in the case of other people." The abominable usurpation of children against the father was abolished, and to these concessions, the conditions annexed were: Taking the oath of 1774, and, that the law should not extend to converts relapsing, or to protestants becoming papists, or educating their children in the popish religion; the legislature naturally considering that some suspicion attached on frequent versatility of faith, and on those who professed a religion themselves which they would not transmit to their posterity.

Four years after that, in 1782, the spirit of toleration further extended itself, and sound policy gained a further ascendancy in favour of the Roman Catholics. That system of severity, which a few years before was thought prudence, began to look something like injustice, and what prejudice had adopted as preservation, moderation began to view as little short of oppression.

In 1782, the capacity of acquiring land by purchase, which in 1778 was granted under a fiction, was given direct and entire.

"The acquisition by purchase, grant, limitation, descent or devise, by will or otherwise descendable, as the lands of protestants," was communicated to the Roman Catholics. Some of their disabilities, as to education, were removed. The severe law was repealed, that compelled the papists to declare, on oath, when, and where, and by whom they heard mass celebrated. The unequal attachment of their properties to make reprisals for common robberies, was discontinued; their horses were no more to be exposed as publick plunder; and the preposterous, but offensive prohibition, whereby persons professing the popish religion were forbidden to reside in certain cities was repealed. They were allowed the full rights of property; the free exercise of religion; and to appoint guardians to their own children.

Here, it must be confessed, was a great effort of liberality, in opposition to old opinions. The occasion was worthy of the exertion; and the consequences justified and rewarded it. Exclusive of all moral duty, it was of so great moment to the national prosperity to involve in its interests, to attach, to naturalize in their native country so great a body of its inhabitants, to make them a part of the nation, without whom we could not be a nation at all.

However, sir, considering the nature of man, the obstinacy of old opinions, and the usual acrimony of religious dissension, I must say, that so signal a triumph over rooted prejudices, disclosed such a growing confidence, such an amicable sympathy, such a relenting of heart, in the predominant powers of the state towards the Roman Catholicks of the country, as ought to conciliate their affection, engage their gratitude, and confirm their attachment to the state.

And when I say, speaking from a sense of moral obligation, that such conduct of the legislature ought to have produced this effect; I say, with confidence and assurance, from the authority of experience, that it has produced those effects. It has stamped those sentiments with a deep impression on the minds of our catholick brethren; I mean on the minds of those who are sufficiently enlightened to judge of the relations of political society, or feel the force of moral obligation.

If I were not of that opinion, confirmed and decided as it is into conviction, I would not at this moment stand up as their advocate for another concession. For, I must take the liberty to say, what it is my duty to say as a member of parliament, what it is my duty to observe as a common citizen, what it is the duty of every person to know and to conform to, "that the state is paramount, and all men who live under its protection, live under its control, and are amenable to its superiority." If they approach the legislature, they must approach it by the avenues the constitution has marked out; if they apply to parliament, it must be by petition, not representation or

remonstrance; if they would have benefits, they must solicit them as favours, and accept them as concessions. This is not only the constitution of Ireland, but the constitution of every settled government in the known world.

As to the natural rights of man, of which we have lately heard so much, they do not belong to political society; they belong to that state of nature which is so accurately described by Mr. Hobbs, and so ardently recommended by Mr. Paine; a state where, indeed, the race is to the swift, and the battle to the strong; where possession is property, and strength is right; a state superiour to the conditions of society, the restrictions of covenant, or the bondage of law.

In a society protected by laws, and blessed with a constitution, those laws and that constitution ascertain the *rights of man*.

Therefore, sir, I must freely confess, that notwithstanding my prepossessions in favour of the Roman Catholicks, which I shall always be proud to acknowledge, as they are justified by their conduct; though I can number some of them among my ancestors; though I love many of them as my friends, and embrace all of them as my countrymen, I was yet for some time checked in my ardour, and interrupted in the progress, of my services to them, by reading of late a multitude of publications and paragraphs in the newspapers, and other prints circulated gratis, and communicated to every body, with every degree of industry, purporting to convey the sentiments of the *Catholic body of Ireland*.

If these were their sentiments, they were such as could not recommend them to the further favour of the state; they were such as must alienate their old friends, and could not get them new ones, if they would choose their friends from amongst those who are friends to the constitution. What was the import? They were exhortations to the people never to be satisfied at any concession, till the state itself was conceded; not only that, but till a new constitution

should be made for their present accommodation, and future entertainment; they were precautions against publick tranquillity; they were invitations to disorder; and covenants to discontent; they were ostentations of strength, rather than solicitations for favours; rather appeals to the powers of the people, than applications to the authority of the state. They involved the relief of the Catholick, with the revolution of the government, and were dissertations for democracy rather than arguments for toleration; they seemed the projects of some bold theorists, whose principle was to divide man from man, and whose politicks, to separate Great Britain from Ireland. They seemed to be the effusions of some rash philosopher, ignorant of our system, who would set loose and adrift the little planet we inhabit, and commit it to the vortex of a vain and exploded philosophy; to range the universe without attraction, connexion, or relation to any greater, or other body. Was there a man who felt the blessings of regulated rights, and settled government; who knew the value of peace and the comforts of property? Was there a man who preferred order to outrage, and happiness to speculation; or who looked at the growing prosperity of the country, whose mind must not have revolted at the tendency of such doctrines; or who must not have felt an accumulated concern and disappointment, if he could for a moment suppose that they had originated with our Catholick brethren? that they were the growth of that soil which we had so lately and so liberally cultivated?

But common sense and common justice required of us to trace those opinions to their source.

If the Roman Catholicks embraced those sentiments, the state could not embrace them; if they were misled by rash councils to engage in confederacies of perpetual requisition; if they were not to be satisfied at any concession, whilst any thing remained to be conceded. In that case common sense must suggest to us, that we should not by any new concession unite more power with their discontent; for



however sincerely we may and ought to wish that they should enjoy every comfort and happiness the state can afford them, yet we cannot go so far, as to alter or make a new constitution for their accommodation; we cannot, even for them, hazard the blessings of an established free government, that has been the growth and the wisdom ages, and finally ratified and settled for above a hundred years; we are not so daring as to commit to the chance of every rash experiment.

If the Roman Catholicks could have been so far perverted, as to have addressed the legislature in these high tones of requisition, they would have assaulted that constitution they affected to reverence; they would have made their advances to parliament as *besiegers*, not *petitioners*; and parliament would have been bound, in its own defence, to repulse them, to resist their applications. If you were, in that case, to concede or capitulate, you would surrender the constitution in your charge, you would violate your trust, you would betray the state, and be responsible for the anarchy that would rush in upon you. But I have the happiness now to assert from authority, what I have long learned from experience, "that not a sentiment of this tendency is entertained by the Catholick body; none such belong to them; they renounce them; they utterly disclaim them. There is not a class of his majesty's subjects more attached than they are to the monarchy and hereditary succession; more obedient to the laws, or more devoted to the king and constitution, as by law established.

These principles they testify by their conduct at all times; at times very different from the present, when the laws were less indulgent, when they had fewer pledges to bind them to their country: when property and the titles of land did not appear, as they now do, irrevocably fixed; at times when hostile fleets and armies were on your coast, and when even the king on the throne, by some may not have been suppo-

sed to stand, as he does now, without a rival in their affections.

They now come forward by solemn declaration to reassert those principles at the foot of the throne; to vindicate them from all possible misconception or misrepresentation; they approach you by the ways of the constitution, and with the words of the constitution without asserting a claim of their own, or presuming to dictate to the authority of parliament. "They desire a further repeal of the laws affecting them; they express gratitude for past favours, confiding in your liberality and benevolence, that your future ones will be as extensive as to your consideration of the general welfare shall seem expedient; disclaiming every thing that can directly or indirectly tend to interrupt the publick tranquillity and subjection to the laws; they give you their past as a pledge of their future good conduct;" and, give me leave to say, the constitutional language they express, is a further pledge of the constitutional principles they feel.

With such a testimony, I address you in favour of the Roman Catholicks of Ireland; with a declaration of this import in my hand, subscribed by a host, as to national authority; persons of high distinction, ancient family, great character, enlightened education, ample fortune, and extensive influence in the country; men of general intercourse and knowledge, political, professional, and mercantile; men too, who, themselves and their ancestors, have made ample sacrifices to a sanctimonious observance of their vows. Without affecting or entertaining any disrespect for any other orders or classes of the people, I must say, it is from persons of the description which I have given, that national opinion and professional principle are best to be collected; not from a few deluded people in the South; not from a few dissatisfied people in the North, nor yet from any strange and incongruous connexion that may be fabricated between both; nay, if by some wonderful rotation these two extremities should ever happen to meet; if by some monstrous convulsion the two poles, if I may say so, far as they

are asunder, should be brought into conjunction, they would not have force to disturb the happy and temperate regions placed between, where the people enjoy equal days and indulgent heavens.

With such a declaration of principles, by such subscribing parties, confirmed by the conduct of a hundred years, and attested by the experience and observation of every dispassionate protestant in the nation; I say fortified by such superiour authority, I feel a total indifference to all the several paragraphs and publications to which I have alluded, from the massy pamphlet, to the volatile handbill; from the original enrolment of discord that takes post and garrison in the citadel, to the detachments of newspapers that are sent out to scour the country. For the honour of the nation, I should wish they were not to travel to other countries; for the peace of the nation, I am not afraid they should travel through this. I know the loyalty of the Roman Catholicks of Ireland; I know they will not taste of the cup of sedition, whether it be brought vapid and muddy from the troubled waters of Bethesda's pool; or come heated and mantling from the intemperance of the ale house.

It is under such a conviction that I address you with confidence for a further repeal of the laws affecting the Roman Catholicks, to that extent which your wisdom and liberality shall lead you to think expedient. What that extent shall be, appears to me the only question that can divide the opinion of parliament on this subject; and I confess, that is a question which may naturally produce diversity of opinion amongst wise and good men.

As for myself, balanced as I am between confidence in the Catholicks and devotion to ancient establishment, I have not found it easy to accomodate between the two contending propensities.

If I were engaged in the unfortunate labours of forming a new constitution, it never would occur to my mind to introduce the words protestant and papist as terms of political discrimination. But, as we have a constitution already established, which we feel com-

petent to preserve liberty and to promote happiness; and as we have learned from the experience of others the calamities that may occur in composing a new one, it must be our constant labour, as it is our dearest interest, to watch with a pious vigilance, the excellent one we have, and protect it from the hand of innovation and experiment. We must, in every political transaction, keep that constitution before our eyes, and act with perpetual reference to its principles.

Under that constitution the predominancy is protestant. It was so declared at the revolution; it was so provided in the acts settling the succession of the crown; the king's coronation oath was enjoined in order to keep it so; the king, as first magistrate of the state was obliged to take the oath of abjuration, and subscribe the declaration; and every other member of the state, legislative and executive, stands bound under the same obligation. Whether it was or was not wise, at the time, to have made so broad a barrier, I shall not, at this period, venture to inquire. I own to you, sir, I tremble at the notion of reviewing, for the purpose of altering, any of the constituent principles of that revolution, which in its consequences has proved so happy to these countries. I would not rashly hazard the stability of so noble a fabrick, to remove even an acknowledged defect; and especially when the trade of constitution making has grown into a sort of professional practice; when we see academies opened throughout the country to give diplomas and degrees in that science; and, when even without the advantage of this academical education, common artificers profess to reform the work of Somers and of Locke.

Though I should always hesitate to touch any principle of that revolution; though we should look up to it as to a polar star, by which we are to steer in whatsoever direction we may shape our course, yet I am not so dogmatical as to say that there is any human institution so immutable and entire, as never in any degree, to accommodate to any possible change of the times and circumstances; and it has always been my

decided opinion, that the severities with which party prejudice and religious animosity inspired the penal statutes that succeeded the revolution, are fit objects of frequent revision, for the purpose of repeal or mitigation, in the proportion, and to that extent, which the temper and condition of the times may render practicable or prudent. However, in such remedial proceedings, it is essential to the good of every state to avoid violent transitions or changes; to guard against sudden or extravagant transfers of power or property.

In endeavouring to ascertain the particular points of relaxation which it would be prudent for me to submit to the wisdom of parliament, I made it my business to solicit a communication with as many members of the legislature as I could, without presumption, consult on the subject. You, sir, who know every thing, know that every such consultation which has success for its object, must be conducted and concluded by mutual deference and concession of opinion. I should not be sincere in my services to the Roman Catholics, if I were to hazard every thing by aspiring at more than appeared to me to be conformable to the sense of those who are to decide, and to whose judgment I am bound to submit. I therefore, under that impression, confine myself to the following points.

First, "I would give them the practice and profession of the law," as a reasonable provision, and application of their talents to their own country. Secondly, I would restore to them education, entire and unrestrained; because I think a state of ignorance is a state of barbarity. This, I think would be accomplished by taking off the necessity for a license as enjoined by the act of 1782. Thirdly, I would draw closer the bonds of intercourse and affection, by allowing intermarriage, and repealing that cruel statute that serves to betray female credulity, and bastardize the children of a virtuous mother. Fourthly, I would remove those obstructions to arts and manufactures,

that limit the number of apprentices, which are so necessary to assist and promote trade.

I have now, sir, only to ask your pardon for having taken up so much of your time; but the subject has engaged my mind with so much ardour and affection, that I could not avoid speaking thus largely upon it. It is a subject that I embraced in my youth, and shall not cast off in my age, unless it shall be disposed to desert me. I wish the Protestants and Catholicks should, by the benignant progress of time, grow to be one people; and they certainly would, if some rash intemperance does not interpose to retard the progress, and revive the prejudices which have so long kept us asunder. If the Roman Catholicks look to their old friends, they will see them prove their sincerity, by labouring the practicability of services, rather than deluding their hopes by the magnitude of demand. I am confident they will listen to their old friends, and that that patient magnanimity which distinguished and dignified them in times of rigour, will not desert them in times of relaxation. They may be assured that a perseverance in that conduct can alone give their old friends a capacity to serve them. And they may likewise be assured, whatever misrepresentations have gone abroad, that it is owing to the seasonable interpositions of those high authorities of catholick loyalty to which I have alluded, confronting the publications that traduced their principles, that the favourable sentiments in his majesty's government are confirmed. It is owing to that testimony that I, the humblest, but the oldest of their friends, have the confidence or capacity to plead their cause of this day; and it is a testimony, I trust, will be a powerful advocate for them with the Irish parliament. At present I shall only move you,

“That leave be given to bring in a bill for removing certain restraints and disabilities under which his majesty's Roman Catholick subjects labour from statutes at present in force.”



## COLONEL\* HUTCHINSON'S SPEECH,

ON A BILL INTRODUCED INTO THE IRISH HOUSE OF COMMONS  
BY SIR HERCULES LANGRISHE, FOR REMOVING CERTAIN  
RESTRAINTS AND DISABILITIES UNDER WHICH HIS MAJES-  
TY'S ROMAN CATHOLICK SUBJECTS LABOUR FROM STA-  
TUTES AT PRESENT IN FORCE, FEBRUARY 18TH, 1792.

**F**EW of his contemporaries are more distinguished by versatility of talents, or the brilliant exertion of them, than the author of the ensuing speech.

Like some of the memorable characters of antiquity, he is capable of leading the arms of his country to victory, or, of controlling the decisions of her senate by the powers of a highly impressive eloquence.

The speech we have selected, displays sufficient proofs of the vivacity of his genius, the liberality of his political principles, and of the ease, the elegance, and the energy of his parliamentary harangues.

### SPEECH, &c.

MR. CHAIRMAN,

AS other gentlemen have spoke at large on the principle of this bill, I shall take the liberty of doing the same. This great subject requires unequivocal, and decisive language. I shall speak my sentiments upon it with the utmost submission, but with the utmost firmness. I may value your applause; but I should be unworthy of a seat in this house, if I could fear your censure, when I acted in conformity to the dictates of my judgment, after the best considera-

\* Now lord Hutchinson, who commanded the English troops in Egypt.



tion I could give an important question. The opinions which on this night I shall mention, I adopted in early youth; my manhood has confirmed them; I am confident they are founded on the immutable principles of truth and reason; I shall therefore never cease to cherish them till I cease to exist.

Unfortunately for this country, those jealousies between Catholics and Protestants, which every good man hoped were buried in oblivion, are now rising again. I accuse no man either within these walls or without them, but I implore the attention of you all, and trust that this will prove a contest, not of passion, but of reason; not of prejudice but of argument. Fears have been mentioned in this capital, and in this house, of dangers threatening the protestant ascendancy; these sentiments have extended themselves to the utmost corners of the island, and have been reverberated back again to us. Relying on the wisdom of this house, and on the moderation of the protestants of Ireland, I do hope that this heated collision between the constituent and the representative body, will never create a flame which may devour and consume this ill fated country. I certainly have to regret that this momentous subject has not been canvassed with that temper which the investigation of truth and fair discussion naturally require; but as I do not feel these apprehensions, and cannot see any danger which could arise to the protestant establishment from the further emancipation of the catholic body, I must beg leave to state my reasons why I am of this opinion, and to answer several objections which have been made to the adoption of such a measure.

I shall vote for the committal of this bill. The only objection that I can have to it is; that it does not go far enough. It embraces four objects. The right of taking apprentices, and of keeping schools, the power of intermarriages, and of being called to the bar. I really thought that a bill so harmless, so innocent, and so inoffensive, a bill which gives so little, and that little so reasonable, might have passed into a law without objection and without debate.

The ingenuity of gentlemen would probably have been at a loss, if the favourite topick of the protestant ascendancy had not suggested itself. In this manner of reasoning, I acknowledge there is much philosophy and depth of thought. For the protestant mechanick will assuredly find the protestant ascendancy in the monopoly of trade; and the protestant schoolmaster will use his learning to discover this same ascendancy in the monopoly of teaching. Beauty, honour, virtue, truth, might possibly in the person of a woman and a wife convince a protestant husband, that though a catholick was not to be trusted with power or office, a person of that religion might constitute the joy, the pride, the happiness, the consolation of domestick life. If the law were a profession of less liberality, the protestant barrister might search for this same ascendancy, in the depression of the industry and the abilities of his catholick brother. Certainly the preservation of this ascendancy is the material object to which every other consideration must be sacrificed; yet still I am not able to divest my mind entirely of the idea, that the general prosperity of the great body of the people is something. Impressed with this opinion, I would wish to annihilate monopoly; because I know that trade droops. I would give every man the benefit that might accrue from his superiour knowledge, and promote learning by competition, because it is with difficulty to be found in this land; it has never taken root, but has languished for want of encouragement; or sought refuge in foreign and more congenial climates. I would suffer protestants and catholicks to intermarry, because though the offices, the honours the power, the authority of the state ought certainly to be in the hands of the few, yet I have heard and read that it is the union, and not the separation, the agreement, and not the dissension of the many, which must constitute the strength of the nation. I would open the bar to them, because I would wish to call catholick eloquence to the support of protestant liberty. Great is the succour, great is the security, which countries

derive from the possession of men of talents; they are their natural guardians, protectors and defenders; in bad times they shield the people against the encroachments and corruptions of bad governments, or interfere between themselves and their prejudices.

I hear with amazement the daily cant that the catholick is not persecuted, because he enjoys his liberty and his property in as much security as the protestant; but in my opinion every disability for religious belief is persecution. It is buzzed in my ear, that every man in this house is as tolerant as I am, and that it is a contest for power not for religion. It matters little to the world whether you change the name of things or not, provided the effect still continues the same. It may be contest for power; but it is founded on religious difference. You may argue round the circle; but I still bring you back to the point of religion. For my part, I have not a mind sufficiently expanded to comprehend the force of this reasoning. I cannot conceive the absolute necessity that protestants should exterminate catholicks, or catholicks protestants. May they not flourish together and divide this their country between them? Deny the position and you blaspheme the common Father of both. I do allow that all these contests were originally contests of power. The reformation was opposed by most of the sovereigns of Europe, who thought it dangerous to their power that their subjects should use the light of their own reason, and that all habits of discussion, were inimical to despotism. The clergy availed themselves of their influence over a laity, ignorant and superstitious, and lighted up the fires of persecution, not because they feared God or hated man, but because they loved power.

It appears at first not a little surprising, that a difference of opinion among divines, whether a text of scripture ought to be construed figuratively or literally, should have created such animosities. The absurdity of such a cause of contest is lost in the immensity of mischief it has done. For think as you please, and say what you will, this is the difference,

the real and substantial difference which has caused that immense separation between the Catholick and Protestant church, which nor time, nor reason, nor philosophy has yet been able to close.

The oppression of catholick governments on their subjects who do not profess the religion of the state, has always been the object of the reprobation of the protestants, and too often of their imitation. England has shared in this disgrace, but you have exceeded all other nations. Your old sanguinary code still remains on your statute book. Inspect it again, if the tears of humanity shall not blot the pages and conceal from your sight the disgrace of your ancestors, and the oppressions and calamities of their fellow subjects, and then if you are inclined for panegyrick and self applause, you may boast of the mercy and long suffering of the protestant religion. But if you have been tolerant I do not know what persecution is. You refuse the catholick toleration for his religion; arms for his personal defence; the right of purchase in the country in which he had been born and bred; and any landed security for his money. When with his industry cramped, his person in danger, and his conscience in fetters, he retired to his house for comfort and relief, what were his feelings, what were his apprehensions? He found that the bloody spirit of your inquisitorial legislation had entered before him. The suspicion which you had created dashed every joy of his life, and embittered every prospect of futurity. In his friend or his servant he saw an informer, in his wife the mother of him who might become his bitterest enemy and despoiler. The usual connexions and gradations of human life were reversed. The parent was made to depend on the child, and not the child on the parent. The fondest parent surveyed with doubt and melancholy the opening talents of his offspring. He knew that if his son should prove valiant or enterprising, his country rejected his services, and that he must either pine at home in inactivity, or live an exile in a foreign country. If he should be wise or eloquent he could not raise his

voice in these very courts of justice which were to determine on his property, his honour, his liberty, and his life, without a renunciation of the faith of his ancestors; so that a father in the bitterness of his anguish, was obliged to hope that his son should prove an idler, lest he should become an exile or an apostate. I shall be told that the enlightened wisdom of a late parliament did away some of those obnoxious laws; but it ought to diminish the exultation of your triumph, when you recollect that this repeal was opposed with much obstinacy and spirit, and that the downfall of the protestant religion, and of the protestant establishment was predicted, as soon as the catholick body only should be restored to what will now appear to you to be the common and natural rights of men. When, therefore, such has been your conduct, and such your legislation, you must acknowledge that persecution has been, and still is established by law amongst you, after such a degrading confession, is it any palliation to your offences, that other religions have adopted a conduct more ferocious than yours? Have you no other defence to make for the honour of yourselves and your ancestors, for the wisdom of your government, for the dignity of your parliament, for the justice of your nation, than that others have been more wicked than you? Some of those nations have made an honourable reparation to the cause of injured humanity; if you followed their example when they were wrong, you ought not to reject it now that they are right. The history of christianity has not been very honourable to the professors of that religion; all sects of christians have been in their turns persecutors; they can only dispute concerning the quantum of mischief they have done.

In order originally to justify this penal code, it was found necessary to represent the catholicks as the enemies of civil liberty, and the constitution; as the adherents of a detested family; as holding doctrines erroneous, dangerous, and wicked; all which circumstances rendered it unsafe for a protestant government to place any confidence in them. You cannot

not now accuse them of holding doctrines dangerous to liberty, or of being enemies to the constitution; after you adopted them at Dungannon, after you enrolled them among your volunteers, after you marched embodied together, to commerce and to constitution. Whether in later times they have been the adherents of the expelled families, their conduct for a century, during which period two rebellions raged in England, best can answer. Whether they ever held or continued to hold these wicked, dangerous, and erroneous positions; such as that faith was not to be kept with hereticks; that persons might be absolved from their oath; and that princes excommunicated by the pope might be deposed and murdered by their subjects; let your wisdom, your candour, and your truth pronounce, after you have considered that these doctrines were never received or acknowledged by any catholick church, and have lately been solemnly denied, rejected, and abjured by the principal universities of Europe, by those of that persuasion in England, and not now maintained by any, the most grovelling papist.

It is stated, if not as a crime, at least as an insupportable objection to catholicks, that their ancestors once possessed the government, and the property of this country. During that period your candour must induce you to acknowledge that they often resisted the encroachments of England, and endeavoured to assert and maintain the independence of their legislature. The rebellion of forty-one, and the revolution, deprived them of all power, and in a great degree, with some few exceptions, of property. The power and the property were transferred to protestant hands. It is argued, that if the catholicks should ever acquire sufficient weight in the government, they will overturn this settlement, and restore this property to the original proprietors. This fear appears to me to be imaginary, when all the circumstances are weighed without passion, and without prejudice. The first of these forfeitures is in the possession of protestants for near a century and a half; the latter a century. The

families of many of the original proprietors are extinct, or their representatives foreigners, residing in other countries. The catholicks themselves have purchased some of these estates, and will probably, in course of time, purchase many more of them. They have lent their money on this security. It never can be the interest of the great body of that persuasion to excite a general convulsion, in which their fortunes and the fruits of their industry might be swallowed up, solely for the purpose of benefiting the few. A nation is not to be put in motion, except by grievances which are severely felt by the whole mass of the community, and by causes which are of general, not of partial operation. The great share of property would still be in the protestant hands; and property gives power. The disposal of office would still be in the protestant government, and office gives influence. The command of the Irish army would still belong to you. The navy, the land force, the formidable and illustrious names of Britain, together with ten millions of protestants, would still be at your beck. Let me ask you then, is your situation so critical and so dangerous, that you dare not be just?

It is possible, I allow, that the hard necessity of the times, the prevalence of bigotry and superstition, and the unenlightened spirit of the age, which rejected all principles of toleration, might once have palliated those laws; but if they were necessary in a period of comparative darkness, in a period of discord, revolution and blood, ought they to be continued when these causes, which originally might have justified them, have long since ceased to operate? Posterity, when it shall weigh in a just and impartial balance, the merits and demerits of the different generations which have gone before them, shall consider the enacting of this code, as the misfortune of your ancestors, but the continuance of it as your disgrace. He may be a zealous protestant, but he is not a zealous advocate for truth, who is unwilling to acknowledge, that the sentiments of mankind on the subject of religious differences have materially changed, and that all the cir-

cumstances attending these contests in Ireland, are exactly the reverse of what they were. The spirit of the catholick religion is softened and refined; the influence of the pope, feeble, as the feeble and decrepit hand that wields it; his power overthrown in France, tottering in Germany, resisted in Italy, and formidable no where. The succession is now undisputed, all ranks and religions vying in their attachment to the present family on the throne; we are not now cursed with a pretender to our crown, who was supported by a great body of adherents in England and in Scotland, and by the whole force of the most mighty monarch in Europe. In some sequestered corner of the land, among the old women of the island, there may possibly still exist a Jacobite. Danger no longer threatens you; peace smiles upon you; why then do you still continue to sound the trumpet of war?

Examine well your own situation, and the situation of surrounding Europe. Reflect that this is an age of reason; men seriously consider and speculate upon the various duties and obligations of government: old establishments are no longer to be defended by their rust and antiquity; but by truth and reason. Try your penal code by this criterion, and he must be stupid indeed who is not able to find an answer for all your assertions. Your clamours and your prejudices, your high sounding expressions and your tones of authority may frighten the timid; but they will neither silence the bold, nor convince the reasonable. I am told that under this system of government the country has thriven, and is still in a state of rapid improvement and prosperity. True it is, the vices of your political constitution have not been able entirely to blast the gifts of Providence; they have only checked their growth, and retarded their progress; but a people possessing such energy of character as to be able to fight up against such oppressions, surely deserve more favourable treatment. Are they unfit for liberty, because slavery itself has only been able to deface, and not entirely to destroy the native and inherent vigour of their minds? There



is, I suppose, no man who now contends that a Catholic is not as fit for, and does not love liberty as much as a protestant. But it has been said that the Irish Catholic is a bigot, ignorant and superstitious, who does not deserve freedom, and who ought not to be trusted with power. You of the protestant ascendancy breathe the same air, and inhabit the same country, and you are wise, free, and enlightened! Whence then does the degradation of the catholic proceed? It cannot be from his religion, for the same cause would operate to the same effect, every where; and you must know that liberty, and the principles of government are now well understood in catholic countries. This supposed degradation must then have arisen from that system of law which so many of you are now willing to defend. Let the Irish legislator descend from his tribunal, and exclaim to his subjects, I have succeeded in disgracing and debasing you, I will continue the visitation, and punish you for crimes of my own commission.

I did hope that religious persecution, like every other periodical phrenzy of the human mind, had spent its force, and was passing away. Its progress has been cruel, ferocious, and bloody. Its duration six centuries! Philosophers, in every country, together with America, Germany, and France, have thought such a progress and such a duration were sufficiently degrading to the human character, and have therefore for ever chained to the ground this monster, which perverted a religion of peace, desolated the fairest provinces of the earth, and rendered man a wild beast. Yet, even in Europe, in enlightened Europe, this system has still its advocates in a country of liberty, among that very generation of men who established the independence of their legislature and the freedom of their commerce. This inconsistency ought to make you blush, if religious zeal can blush. What! do you still cling to those terrible prejudices, which manacled your commerce, enslaved your people, and degraded your parliament?

What! are you willing to shut your eyes against your own experience and to remain untaught by the wretched history of your wretched country? Do you not know, that it was your own internal divisions that first promoted a foreign usurpation; which caused the degradation, the oppression, the misery of this noble island, for which God has done so much and man so little? Reflect on the want of skill in your manufacturer; on the small capital of your farmer; mark the appearance of your miserable peasant; see the wretched hovel in which he dwells; survey your country; ponder on the repeated insults offered to Ireland, on her profligate parliaments; on her commerce, once annihilated; on her constitution held in chains; examine well both the past and the present, and then, if you are wise, you will find these effects accounted for by the divisions which distracted you. If you are honest you will seize this opportunity of doing them away for ever. You will then, after the lapse of so many ages become again one nation; for the catholick will forget to be a bigot as soon as the protestant shall cease to be a persecutor.

On the best consideration that I have been able to give this, the most important of all subjects, I do not hesitate to declare, that you must prepare your minds for a radical reformation. I do not say exactly the manner or the time when, but sooner or later this system must fall to the ground, oppressed by its own weight. This necessity arose with the establishment of the independence of your legislature. You are willing after you have become a kingdom to cling and adhere to that narrow and wretched form of government which cursed a humiliated and distracted province. The thing is impossible. You are in the middle between the Irish catholick and English protestant. You must either adopt the one or unite with the other. You must either renounce your prejudices, or abdicate your legislative supremacy. Did you only seize on the sceptre of dominion, in order to exhibit yourselves as a spectacle to the world, and prove that such feeble hands could not wield it?

Would you rather go from nation to nation, begging a master, than form a compact of strength and perpetual peace with your Irish brother?

I have now stated to you my opinion on this question; a question of such magnitude that he must be a dishonest man indeed who could utter any sentiments that were not really his own; and he must be more than a coward, who, feeling strongly, should not dare to express himself in the same manner. I have done so. I thought it my absolute, and bounden duty. I know your fears, and I laugh at them. I am convinced of your prejudices, and I despise them. I cannot think of putting the fleeting opinions of any body of men, however respectable in competition with the dictates of my conscience, and the sacred interest of this my country.

I appeal from yourselves to your cooler reflections, in moments of less irritation. For my part I can see the prosperity of Ireland but in the union of all its inhabitants, and the union of all its inhabitants but in the adoption of the Catholick body. If it can arise from any other circumstances, convince me of it by arguments strong and irresistible—I will then acknowledge my error, and my renunciation of the principle shall be strong, explicit, decided, and sincere as the avowal.

## THE HON. MR. KNOX'S SPEECH,\*

ON A BILL INTRODUCED INTO THE IRISH HOUSE OF COMMONS  
BY SIR HERCULES LANGRISHE, FOR REMOVING CERTAIN  
RESTRAINTS AND DISABILITIES UNDER WHICH HIS MAJES-  
TY'S ROMAN CATHOLICK SUBJECTS LABOUR FROM STA-  
TUTES AT PRESENT IN FORCE, FEBRUARY 18TH, 1792.

**D**URING the course of this debate, in which we exultingly perceive the triumph of genius, and candour, and charity, over the illiberal powers of rancorous fanaticism, Mr. Knox distinguished himself by a speech which happily unites the precision of logick and the pathos of eloquence. One object of the bill to which his ardent zeal and brilliant talents brought the most decisive support, was to throw wide open the profession of the law to the ambition of every aspiring catholic. By a policy equally narrow and absurd, the disciples of the church of Rome had been interdicted from practising in the courts of justice. This odious restraint, this *manacle of mind*, was now to be for ever cast away. On this occasion, with an ardour, which the topick warrants, and with an accuracy of discrimination which nothing can amend, the orator justly characterizes that *noble profession* of which he appears to be an exemplary member.

We here see as on an *animated canvas* the true resemblance of an honest lawyer, whose liberality of conduct never halts behind liberality of sentiment, and whose honour is always as bright as his genius.

\* Mr. Knox is the son of lord Welles, and though a very young man at the time of the delivery of this speech, was a leading member of the Irish bar and the house of commons.

## SPEECH, &amp;c.

MR. SPEAKER,

I OFFER myself to your notice, sir, in the humble hope, that the consideration which I have given this subject may be of some service to the cause which I support. I know that in the cause of truth, the weakest abilities will prosper, and I believe that such is the cause in which I now engage. Sure I am, that since the hour I had first the honour of a seat within this house, to the present moment, no question so extensive in its operation, and so important in its consequences; in which interests more various were involved, and in which prospects more distant and obscure were to be penetrated, ever came into discussion here. To determine it, we must peruse the pages of the future by meditating the records of the past; we must inquire into the nature of man as an individual, and as a member of society, and see where the appetites of the savage stimulate the habits of the citizen. Before this question every struggle of party, every exertion of a partial and local ambition, every effort at a vain and temporary popularity, is forgot. Over this question the nation does not sleep, nor the parliament slumber. It needs not the arts of the rhetorician to adorn it, nor the powerful appeals of the orator to gain it audience. It comes forward in its simplest garb, and the eyes of the multitude are upon it.

It is useful in the investigation of a great subject to lay down certain principles as axioms, by which the person who discusses them is to be governed, and beyond which he ought not to wander. Now I discover such a principle in the muniments of our constitution, and to that principle I adhere. It is *connexion with Great Britain*; and I add another principle, as a corollary to that, namely, *protestant ascendancy*. For I say that as long as Great Britain remains attached to a protestant establishment, and a protestant crown, so long must we, being protestants, remain the ruling

power here, or the connexion is dissolved. That is, so long must such a paramount authority be vested in us as shall be a security for the permanence of our protestant monarchy. Shall we call a catholick parliament; and how long shall we be without a catholick king? Can the legislative be of one faith and the executive be of another? And, if they can, is it possible that they should cooperate in the support of the same ecclesiastical establishment? No, sir. The catholicks are but men; and is it not the nature of man that desire should grow with gratification, and ambition with power? They are men attached to a particular worship; and is it not the nature of religion to urge its votaries to the elevation of its ministers? Let the catholicks endeavour to persuade themselves of the contrary. They cannot persuade us. What then must be the objects of our deliberations? Conformity, civil and religious.

And how is conformity to be obtained? I will not quote to you the words of Montesquieu, nor the language of every writer on toleration. I need not tell you that christianity flourished under contempt and grew up under oppression; I need not tell you that the protestant faith was generated in the fires of intolerance, and that the ashes of her martyrs fertilized the soil of reformation. We know, without the aid of history or appealing to any authority, save the feelings of our own breasts, that there is an elastick principle in the mind of man that rises against pressure, and that to oppose prejudice by force, is to strengthen and condense it. How has that principle operated here? A hard and cruel necessity obliged our ancestors to consider their countrymen as their enemies, and to load them with those fetters which suspicion, hatred, and timidity have already forged for discomfited ambition, and half smothered, but not extinguished revenge. What was the consequence? The catholicks, finding the arms of the protestants folded, and that their hearts were closed against them, resorted to foreign powers for protection, and to each other for sympathy. They became a strong, be-

cause a united party; and they were united because they were oppressed. They found a melancholy pleasure in telling over their wrongs and reviling the authors of them. They felt the necessity, as well as the pleasure of mutual connexion and support. They became as one family, united in one interest, and kept together as well by sentiments of affection, as by principles of honour and shame. When time had, in some degree, softened the rancour, and experience had confuted the suspicions of our fathers, we find them opening their eyes on their situation, and perceiving that a country thus disunited could never become rich or powerful. They saw the mischief, but they were either not sufficiently enlightened, or too much governed by their antipathies, to see, or to employ the remedy. They desired a unity of religion, and what were the means which they adopted? The most base and barbarous that ever entered into the heart of man to conceive. They bribed the son to betray the father; and in his way to the temple of the true God, they made him trample on the author of his existence.

Policy so cruel and unnatural met with the success which it deserved, and which might have been expected. A few abandoned wretches came forth loaded with infamy and execration, and offered up the sacrifice of impiety at the shrine of our holy religion. But the body remained whole, and the more strong and the more healthful from the separation of its polluted members. At length the time came when the patient loyalty, and the silent sufferings of the catholicks were to be acknowledged and rewarded. They received, indeed, but a tardy acknowledgment and a penurious reward. But much was done when a beginning was made; and in the twilight of toleration which glimmered in 1778, you might have seen that sun which rose in 1782, and which is now ascending to the meridian. New principles then began to establish themselves; coercion gave way to conciliation; we held out hope where we had formerly held out terror. We allowed the catholicks to realize the

rewards of their industry, and thereby we encouraged them to be industrious. But we did more; for we attached them to the laws by which they are now protected; whereas, before we estranged them from the laws by which they had before been coerced. From that moment they began to love their country and its constitution. From the moment you planted toleration in the land, the weeds of bigotry and disaffection rotted from its surface. The same moment that you took off the bonds of oppression, you broke the bands of union, and now that you are disinterring the political corpse of the catholick people, and exposing it to that air which you yourselves have exclusively breathed; behold it crumbling into dust! Where is now that union amongst them which you once so justly feared? See them already discovering the first symptoms of free sentiments by the parties into which they disjoint themselves. See the \*virtuous and the venerable, and the †learned and the liberal, and the host of illustrious names that accompany them, separating from the partisans of sedition, and preparing (to use the words of a great man, now no more†) “to embosom themselves in the state.” The honourable baronet,|| therefore, presents to us this bill with the confidence that experience has ratified its principles, and I believe I may add, with the confidence that your suffrage will confirm it. You see what we had to encounter and the arms which we successfully used. Bigotry we attacked with toleration; alienation, with concession; and the spirit of party with the spirit of ambition. Look through this bill, and see whether it does not use the same weapons against the same adversaries! To bigotry it opposes education, to alienation it opposes intermarriage, and to ambition it offers the honourable profession of the bar. It goes on encouraging industry, by taking off the restriction on commerce; and by diluting the spirit of party; and by infusing the stimulant of ambition, it

\* Lord Kenmare. † Mr. Bellew. ‡ Mr. Flood.

|| Sir Hercules Langrishe.



renders palatable the cup of conformity. I do not mean, sir, to enter very minutely into the different clauses of the bill, but I cannot avoid making a few observations on each.

The bar. Sir, I shall not make an unqualified panegyrick on that profession, well knowing that an unqualified panegyrick is as absurd and feeble, as an unqualified invective is as absurd and malignant. Besides, sir, I do not rejoice in any particular success to stimulate me to extravagant praise, neither do I rankle under the recollection of any peculiar failure to goad me to extravagant abuse. The bar, sir, is a profession in which, superiour to all others, liberality of sentiment and rectitude of conduct prevail. The mind of a lawyer, minute and laborious in its researches, and cool and unbiassed in its decisions, must necessarily be detached from prejudice. His practice, accustoming him to view the actions of men in various lights, to see where error is mistaken for guilt, when motives of revenge pass for generous indignation, and the cravings of avarice for the calls of justice. He learns to be cautious in his judgments and liberal in his constructions. It cannot be denied that in a profitable calling there must be many temptations to wrong, and that many fall victims to those temptations; and it too often happens that an undimmed countenance, and an unfeeling heart raise men to an eminence in that profession, to which no man of virtue and no man of taste can endure to see them elevated. But the bar, keeping as it does a watchful and scrupulous eye over the conduct of its brethren, distinguishes meanness and extortion by contemptuous neglect; and no place better exemplifies than the Four Courts, that solitude and shame are the companions of guilt. But why should I dwell on the characters of the profession when I may talk to you of their actions? What is their conduct now? Are they engaged in a selfish opposition to a measure by which so many of them must suffer? No. They support it. Do they wish for a monopoly of the profits of the bar? No. They throw open its doors,

despising every gain but what arises from the honourable contention of industry and talents. With such sentiments as these, and with such frequent and luminous applications of them, they need not fear reproach; for the more they are calumniated, the more lasting will be their praise; neither let them fear that the just objects of their ambition will be withheld from them, since they see, in a recent example, that the same modest talents, the same extensive learning, the same dignity of temper and inflexible integrity, which mark a man out as a fit dispenser of justice to a well regulated state, recommend him to the government and place him on the bench.\* Such a profession, therefore, it cannot be much mischief to the cause of conformity to offer to the catholics. Their prejudices it will subdue, by its study and practice; and their antipathies it will remove, by their introduction to a protestant society. It places an object of ambition before their eyes in the bench, attainable only by conformity, and it abates the impediment of shame, by removing them from the body to which they formerly belonged.

As to marriage, the same principles apply, and the same motives urge. Every passion of the human heart is a material for the mould of the legislator, as for the observation of the philosopher. If he wishes to smooth the asperities, and soften the acrimony of society, he will seek for that passion which all animated nature acknowledges, but which, united to taste, and blended with sympathy, becomes in the human breast the source of every benevolent and every generous feeling. He will temper its violence by the solemnity of religion. He will restrain its excursions within the limits of law. I speak not of that passion which hurries intemperance into the arms of prostitution; still less of those loathsome vices which sacrifice youth at the altar of decay, and fling contempt upon those gray hairs on which we should only look with veneration. I speak of that sentiment which

\* Counsellor William Dowdes.

unites soul to soul, and makes the heart expand beneath the modest bonds of sacred wedlock. I speak of that sentiment which our rude ancestors scorned to use, but which we are not ashamed or fearful to apply. By resorting to it we shall not only subdue the violence of individual prejudice, but we shall unite families now separated, and, what is of no little moment, we shall efface the distinction of names.

By the intermarriage of protestant and papist, therefore, we unite them more closely to ourselves, and, above all, we break that bond of union which linked them to each other, and give room for the operations of strong passions to excite them to conform.

With regard to education, I am pleased with what is done; but, I confess, I wish the mover of the bill had gone further. I should have wished, that some institutions were contrived for the education of priests, and that catholicks as well as protestants, might terminate their progress through the university, by the honour of a degree. But as it fell from persons of high authority, before this debate came on, that my idea might be accomplished by other means, I shall at present say no more about it. Permit me now to say a word or two in answer to those objections which have been urged against this measure.

The objections, indeed, are so inconsistent and contradictory that they generally refute one another. But some observations have dropped in the course of the debate to which it is necessary to allude. We have heard "that present concessions will be no obstacle to future demands." Now, if demands be an evil, I ask whether we are most likely to incur that by compliance or by refusal? And if they can neither be discouraged by the one nor by the other, as I believe, we must then apply to the usual remedies in cases of compulsion, patience and contempt; and we must at last resort to that conduct which best becomes a legislature; that is, we must give what it may be right for us to give, and we must withhold what it would be wrong in us to bestow. But, says my learned friend on the other side of the house, "we

have been governed in this concession by our fears." I admit that the counsels of folly and timidity are the same. I admit, that though an action be ever so just, and wise in itself, yet if it appears to be the result of motives rather of weakness than of wisdom, the action will be contaminated by its source, and instead of diffusing benefit, disseminate destruction. But, sir, did my learned friend examine into our actions before he decided upon our motives? How do they speak? The turbulent and clamorous, that is, those who might have been supposed objects of apprehension, we have treated with proud denial and contempt; to the more reasonable and moderate requisitions of the humble, we have listened. Those, whom we might have refused without a murmur, we have gratified; and those who affected the language of intimidation, we hunted from our doors with scorn and reproof. Could a more exact line be drawn between liberality and meanness? But there are others who do justice to our motives, but are fearful for appearances, and who say, that we ought to reserve our bounty till it shall seem not to be extorted. I trust in God I may never see arguments such as these prevail in the grand council of the nation! But if they should have weight, then I say that this is the time to act. Yes, sir, if ever there was a time when parliament should demonstrate its magnanimity, it is now. If ever there was a time when it could show itself superiour to the little passions of little minds, to vulgar pride, and feminine resentment, it is now. If ever there was a time when it could show itself superiour to those aspersions to which it has lately listened with exemplary patience, it is now. This is the time in which it should be proud to move towards the publick good, without the haste and hurry of passion, or the languor of indifference. This is the moment to prove that the attacks of its revilers are untrue, and that *the only trade of parliament, is the commerce of benevolence and justice.*

That a part of the catholicks have been indiscreet, I allow. That a part of them have lately been seduced into measures of madness and conceit, I allow; but,

that those measures should excite any serious alarm, or defeat the reasonable desires of the deserving, I cannot admit. I cannot admit that the speculative sedition of the day, and of a few, should outweigh the practical loyalty of millions for a century; or that we should be apprehensive of sentiments, now that the empire is most flourishing, which we defied when it was most feeble, and more particularly when I perceive that one injudicious friend, or one insidious adversary, may, at any time, excite those clamours which will thus be a perpetual impediment to the liberality of parliament. But, I confess there is a point of violence, to which it would be apathy and imprudence to submit. There are measures of open turbulence, plans of secret sedition, which may, and which ought to obstruct our bounty. There are occasions in which we must abandon those whom we would serve, *to preserve the constitution and ourselves*. And therefore I caution the Roman Catholics, if they wish to preserve and strengthen their friends, and to disarm their enemies, not to be pushed on by the disproportion of their hopes, and the desperation of their leaders, to schemes of ambition which they may long repent. I warn them against rash counsels, and giddy counsellors. I warn them to repose their cause in the permanent property, and permanent character of the nation; in men who have an interest in the general good, and a pleasure in the general favour; and not to trust it to needy adventurers and forward missionaries; men mean enough to be their flatterers, and mercenary enough to be their stipendiaries. I warn them against secret cabals, and faction meetings, and turbulent resolves, and seditious actions. For I tell them, if they proceed to measures of intimidation, their enemies will triumph, and their cause is lost. They have to do with a people whose temper is spirit, and whose sentiment is honour. If they attempt to excite fear, they will only kindle indignation. And again I repeat it to them their cause is lost.

And now, Sir, let me advert to the language which is used by the foolish friends and crafty enemies of

the catholick cause. They tell you that you are doing nothing for them by this bill, and that as long as you withhold from them every privilege which every protestant enjoys, they are oppressed men, they are slaves; or, in the language of their affectation, they are *Helots*. The catholicks oppressed! Is it a proof of their oppression, that one of their arguments, for the extension of their privileges is their wealth, and that another is their power? Is it a proof they are oppressed, that they are protected in their lives, their liberties, and their properties with as ample a security as any protestant in the land? Is it a proof of their abject state, that they enjoy every luxury, and riot in every excess in which the most wealthy and profligate protestant can wanton? And is that munificent subscription a proof of their distress, with which they vainly hoped to advance their cause by the purchase and importation of an advocate? Is their clamour a proof of their oppression? Real misery bears its load unheard. It makes no ostentation of grief; no parade of woe. It does not vociferate its clamorous complaint. Where is it to be found? In the wretched peasantry of this country, protestant as well as papist. You will find it in their miserable hovels, and amongst their naked families; you will find it in their precarious tenures; in the extravagance of their absent landlords, and the extortion of their griping agents. There is real misery, and there is a call to the humanity of this house. But the catholicks knock at our door, force into our chambers, and with the arrogance of masters, and the haughtiness of tyrants they tell us, "truly they are our slaves." Suppose, sir, I should take one of these slaves at his word, and that I should say to him, "resign that tawdry habit which so ill becomes you, and yield it up to those to whose station it more properly belongs." What do you think would be his answer? He would say, "Sir, I live in a land of freedom, in a country governed by general and equal laws: my property is protected, and it cannot be violated with impunity." These would be his sentiments; but, I question if they would be

couched in words as moderate as mine, much less would they be conveyed with all the humility of servitude. But suppose I should proceed to punish my slave for his contumacy. I fear that a disloyal hand would be raised against its lord——Sir, I have read of slavery——thank God I have never seen it! I have read of those who, worn with chains, and oppressed with labour, have sunk under their burthens, and were only awakened to new misery by the relentless lash of a ferocious keeper. Is this the slavery of the catholicks? I have heard of men snatched from their country, their families and friends, and deprived of every comfort which nature, sympathy and habit had rendered necessary to their happiness; wearing out a painful existence in servitude and exile. Is such the servitude of the catholicks? I really am at a loss to know what these selfpitying gentlemen mean when they talk to us of their slavery. Once, it is true, their case called strongly for compassion, and I think I was truly sensible to their complaint. But I must frame new feelings for my mind before I can compassionate their sufferings now. So hard hearted am I become, that I cannot grieve with them that they are deprived of the succession to the throne. So obdurate am I grown, that I cannot lament with them that they are deprived of seats in this or in the other house. And so inflexible are my feelings, that I cannot weep with them for that most lamentable of all their ills, their exclusion from offices of profit and of trust.

I come now, sir, most unwillingly indeed, to what has fallen from an honourable friend\* of mine, in the course of the debate. He has hinted at a proposition, the intention of which is no other than *to imprison* the understanding of the present generation, and to throw ineffectual fetters over the understanding of our descendants. If I were not convinced of the good sense and sanity of my honourable friend, I should suppose that such a sentiment had been struck from the burning fancy of some bigotted bedlamite,

\* Mr. Staples.

Good God, sir! Was my honourable friend serious? Does he not know, that though the principles of a constitution, like the principles of morality, are immutable; the measures of a state, like the actions of an individual, must vary with the varying course of things? Does he not know that the same action which under some circumstances is heroism, under others is murder? That the same measure which to day is patriotism, to morrow may be tyranny, but that the principle remains unchanged? Now, the protestant ascendancy is a vital principle of our constitution, interwoven in its whole frame, and essential to its existence. It is recognised and established by the most solemn legislative acts, and on the most awful and interesting occasions. History, tradition, education, prejudice, habit and instinct, root it in our minds; and there is as little danger that an Irish protestant should discard it, as that an American savage should discard the principle of self defence. I cannot therefore see any necessity for adding fresh sanctions to this indelible principle now; but I do see that to attempt to circumscribe its future operation to all eternity; to tell posterity that they must not only derive their constitutional shield from us, but that they must wear it precisely as we do, of the same circumference, in the same position, and with the same constancy, through all the changes of strength and weakness, security and danger, philosophy and bigotry, is to transmit an impotent mandate to men whom we cannot bind, but whom we may teach to undervalue the salutary precautions of our wisdom, by forcing them to despise the silly effusions of our fears. But observe how inconsequently these persons argue, who ground themselves on false principles. For how can gentlemen who profess to act from their constituents, dictate immutable conduct to future representatives of future constituents; or, at this day, proclaim to a future protestant constituency what to such a constituency must be political and expedient? Did our ancestors, when they imposed necessary shackles upon hands rebelliously raised against their lives and



fortunes, in the hour of anger or of danger, speak language such as this? Was this the language of 1778, when we broke into the penal code? Was it the language of 1782, when the tried loyalty and growing liberality of our catholick brethren induced us to give them new privileges? At all these periods the political state of the catholicks was accomodated to the times, and it was left for the wisdom of future generations to determine what degree of political subjection might be necessary to their security. Were this idle manifestation of our sentiments, upon a subject which we have neither the right nor power to decide, merely nugatory and inoperative, I should think it censurable. But when I consider that this attack upon the rights of our protestant successors, is, at the same time, an insult to the feelings of our catholick fellow subjects, I forget the folly of the measure in its mischief. It sounds a false alarm of constitutional danger; it implies a diffidence in our own wisdom and our own strength; it stigmatizes as suspicious those whom we are about to conciliate, and to whom we are tendering the pledges of mutual confidence. It says, "the rewards of loyalty are exhausted," it stifles hopes, and animates disaffection. I am sorry and ashamed that the suggestion has been thrown out, and I trust it may never again be necessary to combat it. I trust that the prudence and liberality of the honourable gentleman who brought it forward may demonstrate to him its danger and inefficacy, and that he may retract it.

Permit me, sir, before I conclude, to say a word or two as to the *quantity* of favour which this bill confers. I am of opinion that we ought to give every thing which it is demonstratively prudent and safe to give. In speculation, I may think that a *limited franchise*, for example, might promote the principle of this bill. But I also think, that time and experience are better guides than any speculation. By these tests I wish the present bill should be tried, before we proceed to further concessions. When those arbitrators shall have awarded in favour of my opinion, then I have no

doubt but the good conduct of the catholicks shall urge their protestant fellow subjects to call upon *their* parliament to push forward in the career of liberality.

These, sir, are my sentiments; and on the discretion of the Roman Catholick body shall my adherence to them depend. If ever it should be said to me, "you have supported the cause of the unworthy, you have embodied sedition, and given it an energy in the constitution;" from the moment that such reproaches can, with truth, be uttered, from that moment my wishes and exertions cease. But I confess, sir, I have far other hopes. I do believe that the time is coming, and that we shall live to see it, when every distinction of sectary shall merge in the common interest of citizens; when we shall be one people, united in one *object*, and possessed of the same powers for its attainment, *the peace and welfare of the state.*

END OF VOL. II.











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